

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In Re:)
) PROMESA Title III
The Financial Oversight and)
Management Board for Puerto Rico) Case No. 3:17-BK-3283-LTS
)
as representative of)
)
The Commonwealth of Puerto Rico,)
et al.,)
Debtors.)
)

In Re:) PROMESA Title III
)
The Financial Oversight and)
Management Board for Puerto Rico) Case No. 17 BK 4780-LTS
)
As representative of)
)
Puerto Rico Power Authority,)
)
Debtor.)

MOTION HEARING

BEFORE THE HONORABLE JUDITH GAIL DEIN
UNITED STATES MAGISTRATE JUDGE

United States District Court
1 Courthouse Way, Courtroom 8
Boston, Massachusetts 02210
July 30, 2019, 1:00 p.m.

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P R O C E E D I N G S

(The following proceedings were held in open court before the Honorable Judith Gail Dein, United States Magistrate Judge, District of Massachusetts, at the United States District Court, One Courthouse Way, Boston, Massachusetts, on July 30, 2019.)

THE CLERK: All rise.

The United States District Court for the District of Puerto Rico is now in session, the Honorable Judge Dein presiding. Today is Tuesday, July 30, 2019, in the matter of In Re: The Financial Oversight and Management Board for Puerto Rico as representative of Puerto Rico Electric Power Authority, Case No. 17 BK 4780 will now be heard.

THE COURT: You may be seated.

Welcome, everyone, to Boston, and welcome to those who are listening in New York and Puerto Rico.

We are here on a number of motions relating to discovery for the PREPA 9019 motion, which is scheduled to be heard in Puerto Rico in October. Judge Swain's rules regarding -- she has repeated a number of times, no audio and video recordings apply to this proceedings as well.

So since there are a lot of people here, I'm assuming that means that since I saw you last you have not managed to resolve all of the outstanding issues. There's death silence. So apparently we still have a lot of controversy.

1 Has anything been taken off the list, or are we...

2 MR. BASSETT: Your Honor, Nick Bassett from Paul
3 Hastings, on behalf of the Official Committee of Unsecured
4 Creditors.

5 THE COURT: You know what, I think we're going to need
6 everybody to speak from the podium.

7 MR. BASSETT: Sure.

8 MR. BASSETT: Your Honor, again, Nick Bassett from
9 Paul Hastings on behalf of the Official Committee of Unsecured
10 Creditors. You know, I don't think that there are any
11 significant issues that have been resolved. There are a couple
12 very discrete issues relating to certain document requests, I
13 believe maybe Request No. 5, that the -- and actually, I have
14 to check my notes. And it may -- may make more sense for me to
15 do this as I go through my remarks today.

16 A couple of discrete document requests have been taken
17 off the table. One of which I was just informed by counsel to
18 the Oversight Board prior to the hearing, the committee had
19 served a supplemental document request asking for models that
20 back up the 2019 fiscal plan. I was informed before the
21 hearing that that will be provided. So that's an issue that
22 has been taken off the table.

23 Beyond that, I think most of the issues again with
24 maybe a discrete exception or two that I will get to that are
25 listed on the chart that we submitted as Exhibit A to our reply

1 brief are still on the table.

2 THE COURT: Okay. So who's starting? You?

3 MR. BASSETT: Yes, this works out well.

4 THE COURT: Okay.

5 MR. BASSETT: So as I -- as I mentioned, your Honor,
6 there are a number of issues, and as you know from reading the
7 briefing and seeing the chart, I think what I will do shortly
8 is try to go through and take through each of the issues, and
9 in large part I will try to use this Exhibit A as a guide to do
10 that, although I may skip around a little bit.

11 Before I actually get into this --

12 THE COURT: Let's see if it makes sense though to deal
13 with some of these item by item, as opposed to you talking for
14 50 minutes about all of the discovery.

15 MR. BASSETT: That's -- that's fine, your Honor. I'm
16 happy to break it up that way. In fact --

17 THE COURT: Let's see where we go.

18 MR. BASSETT: Yeah, that may make some sense.

19 Before getting into the issues, we can talk about the
20 order of addressing them, and I did want to raise some kind of
21 big-picture points that I think are important for the court to
22 keep in mind as we talk about discovery.

23 You know, a lot of the arguments that you've seen in
24 the papers and that you will hear again today from the parties
25 opposing discovery go to the overall burden associated with

1 producing additional documents, providing documents of
2 additional custodians, and, you know, the overall
3 proportionality of those requests to this dispute. And because
4 of that, I think that context is really absolutely critical
5 here. And I know your Honor is familiar with the 9019 motion
6 and the relief that it seeks so I won't belabor the point and
7 go over it again in detail, but just as a reminder for
8 everyone, and this is a settlement being proposed by the
9 government parties that purports to resolve \$8.5 billion in
10 bonds, and in a deal that will pay upwards of \$20 billion in
11 consideration to the bondholders over the next nearly 50 years
12 through payments that are made by the Island's ratepayers for
13 electricity.

14 And the government parties in their own words in their
15 briefing called this an enormous and complicated transaction,
16 and that's a perfectly apt description.

17 And to be clear, the Committee believes that this is a
18 bad deal for the government, and we will raise all of our
19 arguments at the appropriate time as to why that's the case.
20 But the point today is that when talking about whether
21 discovery requests are proportional and what the burden is that
22 the parties should bear, we need to keep in mind the scope and
23 magnitude of this dispute.

24 The other preliminary point I wanted to make was to
25 respond to this notion that was raised in basically all of the

1 oppositions to our motion to compel that somehow between the
2 time that the Committee filed its initial motion to compel and
3 it served its discovery requests and today and the filing of
4 our renewed motion to compel that somehow based on intervening
5 events the appropriate scope of the hearing and the appropriate
6 scope of discovery has narrowed, and I think that's absolutely
7 not the case. In fact, I think the opposite is true.

8 I think if you look at what has happened since we
9 initially served discovery requests until today, the scope of
10 appropriate discovery has actually expanded, and what is, I
11 think, instructive if you look at the very first paragraph of
12 the government parties' joint opposition to the Committee's
13 initial motion to compel, this is -- I believe they filed this
14 on June 7th. The government parties argued at that time,
15 quote, "The hearing on approval of the RSA should focus only on
16 whether the disputed secured claims are discounted enough to
17 put the settlement in the range of reasonableness." So in
18 other words, their initial argument is that all the court needs
19 to consider is whether their settlement of these \$8.5 billion
20 in bond claims, which is approximately 80 cents on the dollar
21 by our calculations, if not more, that that alone is all the
22 court needed to consider. Is that reasonable in light of the
23 risk of litigation.

24 But they had a status conference before Judge Swain in
25 June, and she sent a very clear message that what they had

1 submitted in terms of factual support and argument in support
2 of their motion was not enough. So they went back and they
3 submitted a supplemental memorandum of law at her request along
4 with declarations. And what we have now is 70 pages or so of
5 declarations that go through a whole host of facts and
6 different rationales and justifications for the settlement to
7 go far beyond simply looking at the amount. In fact, now they
8 say that the amount matters less and that it's all these other
9 issues, including the effect that the RSA has on the proposed
10 transformation, the economic objectives of the government
11 parties in negotiating the RSA, including to make sure that the
12 electricity rates to be charged thereunder would be sustainable
13 in terms of being able to be paid by bondholders. The effect
14 of the RSA on PREPA's future they talk about. They talk about
15 the fact that PREPA will not end up in Title III again as a
16 result of this settlement.

17 They talk about the consequences of PREPA if no
18 settlement is reached, including are rates going to rise in the
19 future. They say there's no element that rates will go up
20 without a cap in the future. They put forward 70 pages of
21 declarations that introduce a whole host of factual issues that
22 weren't by their argument at least on the table initially.

23 THE COURT: Well, it's your understanding of
24 Judge Swain's order that you are supposed to have the
25 opportunity to argue about whether or not their calculation of

1 the financial rate savings or the effect of the -- the rate
2 setting is at issue in this RSA in the 9019 motion.

3 MR. BASSETT: Well, I think -- I think, your Honor --

4 THE COURT: I mean, I thought she was pretty clear
5 about -- I think the phrase she used was macroeconomic issues
6 are not on the table related to the viability of the RSA and
7 that the status of the transformation process was not on the
8 table in connection with the 9019.

9 So when you open up and you say you think it's a bad
10 deal, I'm curious as to how -- whether you think that the 9019
11 motion is where you argue the underlying economics of this
12 deal.

13 MR. BASSETT: What Judge Swain made clear at the
14 status conference on July 11th was that everything they've
15 said, everything they've proffered in support of their motion
16 in their declarations is fair game for discovery. Her quote
17 was, "I have to consider that." So there -- just as an
18 example, the effect of the RSA on the proposed transformation,
19 they're arguing that -- I'm presuming that the reason they're
20 arguing that is relevance, and why it goes to the
21 reasonableness factors is because they view that as value that
22 they're receiving in connection with this settlement. And, of
23 course, the entire inquiry when you look at the reasonableness
24 factors and the test that the court has set out that she's
25 going to apply is you look at the value that the government is

1 getting in the settlement and compare that to the risks at
2 issue in the litigation. You compare that to paramount
3 interests of creditors. Those are all factors that the court
4 must consider. And what they're arguing is not that, look,
5 we're getting a 20 percent discount on the face amount of the
6 bonds. They're not saying that that's the only reason for the
7 settlement. They're introducing all these other reasons.
8 They're introducing the fact that this is a great settlement
9 because as a result of this settlement ratepayers will be able
10 to, you know, bear the increases in electricity rates that will
11 occur in the future. This is a great settlement because this
12 transformation is incredibly important for Puerto Rico, and
13 this settlement helps ensure that the transformation goes
14 forward.

15 So that's the package of value that they're saying
16 this settlement gives to Puerto Rico, and that's why it should
17 be approved.

18 Now, I would be happy to --

19 THE COURT: What do you expect to put -- what -- what
20 type of evidence do you anticipate putting forward at the 9019
21 hearing?

22 MR. BASSETT: We anticipate putting forward all the
23 evidence that we need to demonstrate that the purported
24 rationales for the settlement are not, in fact, true.

25 THE COURT: And what witnesses?

1 MR. BASSETT: Well, it's going to be primarily the
2 cross-examination of the four declarants. Now it's three
3 declarants. They've -- we've been informed that Christian
4 Sobrino, the former head of AAFAF is no longer going to be a
5 witness. So the cross-examination of all their testimony
6 demonstrating that, in fact, the purported rationale that they
7 offer for the settlement is -- is, you know, is faulty in a
8 number of respects.

9 We have an expert witness that we intend to -- to have
10 testify, which is not up for discussion on any motion today,
11 concerning the effect that the settlement has on other
12 creditors, which goes to the paramount interests of creditors,
13 which is required as an element of the reasonableness test that
14 the court said it's going to apply.

15 THE COURT: So that's based on the economics of the
16 RSA, right?

17 MR. BASSETT: It's based on the economics of the RSA
18 itself, that's correct.

19 THE COURT: Okay.

20 MR. BASSETT: So this takes me to my next opening
21 point in terms of how I think the landscape has changed since
22 we filed our initial motion, and we make references to this in
23 our renewed motion to compel. I'm sure your Honor is well
24 familiar with it, but, of course, there was the group chat
25 scandal that has shaken up the entire government, led to the

1 resignation of the governor himself, and Christian Sobrino,
2 among others. I think that's hugely significant when we talk
3 about what discovery is appropriate on this 9019 motion.

4 Now, the government parties have said that we haven't
5 tied anything in the chat to this dispute specifically, but I
6 don't think that's correct. In fact, if you look at the chat,
7 which we have all 900 pages of it, there are multiple
8 discussions in there. I think six discussions at least
9 relating to PREPA that spans 15 pages. You have various chat
10 participants, including Christian Sobrino, one of the
11 witnesses -- former witnesses; and a gentleman, Elias Sanchez,
12 who's the soon to be ex-governor's former campaign director.
13 They talk about news releases concerning the privatization
14 process for PREPA. They talk about placing spin on those news
15 reports when they, you know, make public announcements, et
16 cetera. So there is a relationship between these individuals
17 and the scandal that has occurred and what's happening in
18 PREPA. And I think it's important to keep in mind that the
19 official committee of unsecured creditors is statutorily
20 appointed to be the watchdog of the debtors in these cases, and
21 that extends to this proposed settlement.

22 If there are, you know, issues of corruption or other
23 wrongdoing that extend to the proposed transformation process,
24 that's something they've put at issue. That's their
25 justification for the settlement that this is important because

1 we need to make sure the transformation goes forward. That
2 kind of thing absolutely has to be explored here.

3 THE COURT: So you view it as the court's role to make
4 that assessment as to which is the appropriate path forward on
5 the -- in the energy field for Puerto Rico; is that what you
6 see as part of this motion?

7 MR. BASSETT: Your Honor, I will preface all of my
8 remarks or most of my remarks today with the -- the idea that
9 if the government parties want to withdraw or revise the
10 evidence they have proffered in support of the motion in their
11 declarations, and we can have a much different discussion about
12 what's relevant. And maybe the answer is after we seek
13 discovery, and if that discovery is denied on the grounds that
14 the court thinks it's not relevant, our next move is to file a
15 motion in limine to strike entire paragraphs of these
16 declarations.

17 Indeed, on the issue of the proposed transformation,
18 an entire declaration of theirs submitted by Frederic Chapados,
19 an individual with the Oversight Board's advisor Citigroup, the
20 entire declaration goes to the effect that the RSA has on the
21 proposed transformation.

22 THE COURT: So I'm just trying to understand how you
23 see your role in -- assuming they put in that declaration, do
24 you see it as your role as part of the 9019 hearing -- I'm not
25 talking about the confirmation hearing, right. We're not

1 talking about a final plan. So we're talking about the 9019
2 hearing.

3 Do you see it as your role to prove to address the
4 underlying facts that he submits?

5 I don't know. I mean, are you going to have a fight
6 at this 9019 hearing in your view as to projections as to how
7 many users there are of electricity or any of the other
8 assumptions that are made in his discussion about why he thinks
9 the transformation is appropriate?

10 MR. BASSETT: As -- as long as the statements that
11 these declarants are offering are admitted into the record and
12 considered as part of the justification for the settlement, I
13 don't see how we cannot have a fight about all those issues.

14 THE COURT: Okay.

15 MR. BASSETT: So, your Honor, I think that sort of
16 takes me to the end of the -- the opening remarks that I had.
17 So my next planned step was to start walking through some of
18 the specific issues that I have on our Exhibit A there. I was
19 actually going to start a little bit out of order and talk
20 about the -- the nonemail communications issue and then after
21 that talk about custodians and then go through the privilege
22 issues. So I'm happy to address it in that order, in a
23 different order. I'm happy to start with one and then let
24 other parties respond. Whatever you think is best.

25 THE COURT: What I would like to spend a few minutes

1 on though is what actually has been produced. There seems to
2 be a very big difference in your papers as to what information
3 you have about, in particular, the process and the information
4 that was considered by the government entities in approving the
5 RSA, and I think that's sort of an overriding concern
6 throughout this process, and I need some -- I mean, there ought
7 to be some agreement somewhere along the line as to what was
8 produced and what wasn't produced.

9 MR. BASSETT: So, your Honor, I think we actually have
10 gotten some documents in response to nearly all of our
11 requests. So we do have, for example, documents that go to the
12 negotiation of the RSA, the back and forth that transpired
13 between the government parties and the supporting bondholders,
14 but like all of the other or many of the other categories of
15 information where we have received some documentation, there's
16 a big caveat in that there are voids in the production. And
17 that's as a result of either custodians not having been
18 identified, who should have been identified, certain types of
19 documents like anything other than emails not being produced;
20 and in the case of negotiations, specifically we have broad
21 common interest privilege -- privileges that are being asserted
22 so we basically have a huge blackout window.

23 As for RSA negotiations, we have nothing from July 30,
24 2018, through the -- the date of the term sheet for the
25 definitive RSA, which was March 20 -- March 26, 2019.

1 Actually --

2 THE COURT: So you have the -- the communications with
3 Assured during that period?

4 MR. BASSETT: We do. We do. So we have -- we have
5 some communications, but there is -- anything that they
6 consider, which is thousands upon thousands of documents, so
7 they consider to be covered by the common interests in those
8 periods, we don't have that.

9 THE COURT: Okay. So that would be resolved by the
10 privilege discussion?

11 MR. BASSETT: Exactly. But they also --

12 THE COURT: But they have produced information about
13 the negotiation and the information that -- like, if there
14 was -- somebody produced, I think, board minutes and reports.

15 Is that all -- has that all been produced?

16 MR. BASSETT: So from my perspective, we've been
17 informed that we have received or will be receiving certain
18 reports that were delivered to the Oversight Board in
19 connection with the settlement. I don't know standing here
20 right now, because I need to talk to my team whether we
21 actually have received those, but what we definitely don't have
22 are any communications or documents from the files of the board
23 members. I mean, these presentations they've said that they
24 will give us as a one-off, I don't even know what those consist
25 of, but there has been no effort, as far as my understanding

1 and concern, to undertake a search or review of emails or any
2 other files of the actual members of the Oversight Board, who
3 are the decision-makers with respect to the RSA.

4 THE COURT: Okay. All right. So why don't you go in
5 whatever order you think works best.

6 MR. BASSETT: Okay. So again, this goes to an issue
7 we were just talking about, but the respondents across the
8 board have taken the position in this case that the only
9 documents that they're going to search for to review and
10 produce in the files of their custodians are emails from their
11 official email accounts, whether that be at the government or
12 in the case of Assured and the bondholders, at their respective
13 firms.

14 And for a lot of reasons, I think that is just a -- an
15 astonishing position to take, particularly in light of what has
16 happened in 2019 in general. And as your Honor knows from
17 dealing with these discovery disputes all the time, in matters
18 that are far less sweeping in scope and involve much lower
19 stakes in terms of the amount at issue, like a personal injury
20 case is probably taking place in a different room in this
21 courthouse. Text messages are always produced. I mean,
22 they're a form of documents that are required under Rule 26.
23 That's just part of the discovery obligations.

24 For some reason, the respondents are completely
25 unwilling to even have a discussion about giving us anything

1 other than emails. And that would include text messages. It
2 would include anything else on mobile devices, the chats of the
3 kind that have caused the recent scandal, all of those types of
4 messages, we've been told across the board we can't have them,
5 and I think it's -- you know, it's noteworthy that the
6 government parties aren't taking the position that they're not
7 relevant. In fact, they say in their objection to the renewed
8 motion to compel that they don't know if they would be
9 relevant. They say the actual material value, if any, of
10 nonemail electronic communications is, of course, impossible to
11 know without actually collecting and reviewing the devices. So
12 they admit that they haven't looked, and they don't know that
13 they might. They're just not willing to undertake the search.

14 They also haven't told us that they don't have the
15 mobile devices or these other communications available to them.
16 They've just said they don't want to get them. And they also
17 haven't articulated that it would be particularly burdensome.

18 Collecting a mobile device and imaging it again is
19 something that happens all the time, and when \$8.5 billion of
20 bond claims are being resolved, given the magnitude of this
21 dispute, whatever incremental expense there is associated with
22 collecting those text messages is one that we think should
23 absolutely be incurred.

24 And now I've already talked about --

25 THE COURT: One of the problem that I'm having though

1 is drawing that line between what people may have thought
2 individually. I understand that there's a lot of money, and I
3 understand this is a very significant event, but I also
4 understand that we have a very short time frame that we're
5 dealing with and that the discovery needs to be efficient; and
6 that while I recognize that you viewed Judge Swain's order as
7 opening discovery, it seems to me she made it clear that it was
8 very focused at least on the issues that are going to be
9 presented at the 9019.

10 MR. BASSETT: Right.

11 THE COURT: So I do think we need to focus on what the
12 most efficient discovery is, and I'm not sure where individual
13 thoughts, as opposed to the board's itself expression of
14 policy, is relevant. You know, if one member thinks it's a
15 good deal and one member thinks it's a bad deal, does that
16 really matter when you all have to -- when they have to take a
17 collective opinion -- a decision? And I don't know the answer.
18 I'm asking you.

19 MR. BASSETT: I think it absolutely matters. I don't
20 know what official board communications would even be. I mean,
21 the board consists of and acts through its members. So their
22 communications --

23 THE COURT: But it makes a collective decision, right?
24 So -- it does, it makes a vote, and then there's -- there are,
25 as I assume you've obtained, you have or will obtain, you have

1 official presentations, you have official votes, you have
2 official statements that are made. I gather you're not
3 fighting about those. Those at least have been represented as
4 being produced so you're going beyond that?

5 MR. BASSETT: We're -- yes, I mean, we've
6 received -- to be clear, we've also received emails from, and
7 I'm not just talking about board members here. I'm talking
8 about the custodians we have received documents from.

9 At the Oversight Board, we've received documents from
10 Natalie Jaresko, the executive director. We've received
11 documents from Alejandro Figueroa, the PREPA transformation
12 manager. We've received some documents from counsel at -- at
13 PREPA and AAFAF. We've received documents from Christian
14 Sobrino. We've received some documents from advisors at
15 Ankura. So it's not just the custodians we don't have, who we
16 think should present text messages; it's the ones we do have.

17 From the concerning we do have, we've been given their
18 emails. We've been given the individual email communications
19 of these people to the extent they exist that talk about the
20 RSA, the proposed transformation, all the relevant topics that
21 we've -- that we've asked for, but our point when it comes to
22 text messages and to the scope of the searches that are done by
23 custodians, which I'll talk about later, is that they can't be
24 limited to what they want to give us. And if history has shown
25 anything, it's that the officials in the Puerto Rico

1 government -- I mean, set aside whether or not the chat
2 contains information relevant to PREPA. It could not be more
3 clear that the way government officials, including the one
4 Christian Sobrino, who is put forward as the key witness, the
5 only declarant for the -- for AAFAF and PREPA communicates
6 using chat messages and other nonofficial email forms of
7 communications to talk about how he really feels about official
8 business. I mean, that's the kind of discovery that could not
9 be more relevant. I mean, if you have board members here,
10 Natalie Jaresko, the executive director, she doesn't want me
11 talking about in private how this is a horrible deal, about how
12 in the underlying merits of the dispute makes the bondholders
13 have no chance about how this doesn't have any bearing on the
14 proposed transformation.

15 There could be any number of statements that are being
16 made that directly undercut everything they are putting forward
17 as the rationale for this settlement in their declarations, and
18 we can't -- we can't just be told that we're not entitled to
19 that.

20 It -- your Honor, last night I was looking at some of
21 the indictments that were recently issued. On July 9th, the
22 DOJ issued indictments against the former secretary of the
23 department of education, the former health insurance
24 administration director, among many other defendants in the
25 government of Puerto Rico, for a combined 32 counts of

1 conspiracy and all other kinds of wrongful conduct. And in the
2 indictment, the DOJ specifically alleges that these individuals
3 carried out their conspiracy using personal email accounts and
4 text messages and other forms of group chats. I mean, what we
5 know from recent history is that the way these officials have
6 chosen to communicate is not through their emails. So for us
7 to only get emails is depriving us of what we believe would be
8 the most relevant and revealing documents in this entire case.

9 So the next issue, I was going to move on and talk
10 about custodians. I'm happy to let people --

11 THE COURT: I think that will probably go together.

12 MR. BASSETT: Okay. So, obviously, the custodians,
13 and I'll try to not be repetitive because we have gotten into
14 some of these issues already. And I'll just briefly recapture
15 what we have.

16 Again, the Oversight Board, we have documents from
17 three members of their outside counsel, I believe; and if I'm
18 wrong, I'm sure Ms. Dale will correct me, from Natalie Jaresko,
19 who's the executive director; and then Alejandro Figueroa,
20 who's the PREPA transformation manager. Again, no documents
21 from a single board member, who are the actual decision-makers.

22 And what's noteworthy is that the Oversight Board has
23 agreed to give us a deposition of one of those board members,
24 David Skeel, but they told us we can't even have his documents
25 in advance of the deposition.

1 Regarding AAFAF and PREPA, I think as I mentioned, we
2 have documents from two of their outside counsel, certain
3 individuals at Ankura, I believe it's three, although
4 Ms. McKeen can correct me if I'm wrong on that. And then
5 documents from one actual government official, and that's
6 Christian Sobrino, who as we've discussed, obviously, now has
7 resigned.

8 So as to the AAFAF custodians, what I think is
9 important is as it stands today, we don't have documents from a
10 single person associated with the AAFAF outside of their
11 advisors, who continued to be with AAFAF. So there's no
12 documents from any actual decision-maker that have been made
13 available to us in discovery.

14 Now, we've listed four or five individuals, who we
15 would propose as potential custodians, and we're happy to have
16 a discussion with counsel about, you know, maybe it's not all
17 those custodians, maybe it's certain of them, but we think
18 absolutely that some or all of these people that we mentioned
19 should be added as custodians, and just to briefly tick through
20 those. Jose Ortiz, he's the CEO of PREPA, and the documents
21 that we've seen in discovery state that he's in charge of
22 implementing, quote, the financial, operational, and
23 administrative restructuring efforts and initiatives of PREPA,
24 including the PREPA transformation plan.

25 Indeed, I noticed this just yesterday, Jose Ortiz led

1 a round table. This is reported on through reorg research with
2 local reporters who talk about the transformation. He
3 announced in that round table that one of the four
4 concessionaires had dropped out of the bidding. He also
5 touched on an issue with the Puma fuel contract and some
6 controversy surrounding that, but the point is, he's somebody
7 who is knowledgeable of key issues, but yet not made a
8 custodian.

9 Another one is Gerardo Loran Butron, who is a member
10 of the PREPA transformation in AAFAF based on what documents
11 we've seen. He's the one person --

12 THE COURT REPORTER: Excuse me. I'm sorry. I don't
13 have any audio.

14 MR. BASSETT: Oh, I'm sorry.

15 THE CLERK: Can you test the podium mic.

16 (Discussion off the record.)

17 THE CLERK: You're good to go.

18 MR. BASSETT: Thank you.

19 Gerardo Loran Butron, who is a member of the PREPA
20 transformation team at AAFAF. As I was saying, it's our
21 understanding from the documents and what we have been able to
22 gather from other sources that he's the -- the lead person at
23 AAFAF, who has knowledge of the transformation.

24 Another individual, I'm probably going to butcher
25 these names, Eli Atenza Diaz, the PREPA board chairman, who has

1 general responsibility for the oversight to PREPA.

2 Nelson Morales, the CFO of PREPA, he was actually
3 identified in response to the interrogatories as having
4 relevant information concerning the extent of the security
5 interests that the bondholders have in their collateral, which
6 is the key issue in the underlying litigation that's being
7 settled. He's also the CFO, who has knowledge of the
8 transformation process, et cetera. I mean, another custodian
9 who has a dispute particularly of this magnitude, we think
10 should be included and should give documents.

11 Lastly, we have Filsinger Energy Partners, who's the
12 entity that has been appointed the chief financial advisor for
13 PREPA.

14 The documents that we've seen indicate that the PREPA
15 board stated that it had asked Todd Filsinger of Filsinger
16 Energy Partners to take on the, quote, "single point of
17 responsibility for further development of the coordinated
18 transformation plan." He's the -- the documents make clear
19 that he has been at meetings involving the transformation, et
20 cetera. Again, clearly a relevant custodian.

21 THE COURT: And who have you received information --
22 who are the custodians that have been provided; do you know?

23 MR. BASSETT: Yes, so as I mentioned earlier, as far
24 as PREPA and AAFAF are concerned, one. Well, we have -- we
25 have outside --

1 THE COURT: You have the outside counsel?

2 MR. BASSETT: Outside counsel, some advisors from
3 Ankura, and then one person associated with PREPA and AAFAF,
4 who's no longer there.

5 So, lastly, on the custodian front, we do have an open
6 dispute also with the ad hoc bondholder group. We've received
7 documents from -- again, there seems to be a theme in being
8 limited to advisors, so we've received documents from outside
9 counsel and from their financial advisor. We have not received
10 any documents from any principals at any of the member funds of
11 the group. We've had a long running discussion with their
12 counsel about that, about how we could potentially narrow the
13 universe of custodians for something reasonable.

14 What we had offered was, look, just take your -- the
15 two what we understood to be the biggest for those concerned,
16 the largest amount of holding members of the group, and give us
17 two people from each of them, give us the person who is
18 responsible for the day to day of this particular deal or
19 transaction, and then the person who is, you know, sort of
20 primary ultimate overseer. So just give us two custodians from
21 those two -- those two funds, and the answer has been no, we're
22 not willing to do that.

23 And I think those documents are relevant. I mean,
24 what -- their views as to whether this settlement is, in fact,
25 you know -- if there's -- if there's somebody at one of the

1 bondholders who is saying, you know, look, this deal is the
2 steal of the century, you know, there's an old saying, you know
3 a settlement is a good one if both sides are a little unhappy.
4 If it turns out that's completely not the case on the
5 bondholders side, that's at a minimum probative as to whether
6 or not this is a reasonable settlement. They also may discuss
7 the underlying merits of the dispute, which is do they really
8 have secured bonds and what are those bonds secured by. That's
9 what is being settled here, and, you know, if there's
10 admissions from the bondholders that they either aren't secured
11 or have a secured interest only in very limited funds then
12 they're entitled to virtually nothing instead of the, you know,
13 eight and a half -- or 80 percent of \$8.5 billion, I guess,
14 that they're getting in the face amount of new bonds.

15 So -- so for those reasons, we think those custodians
16 are relevant too. So I'm happy to answer any questions as to
17 the custodians or anything else; otherwise, if now is a good
18 breaking point, I'm happy to cede the podium.

19 THE COURT: So that -- that seems to me to make sense.

20 MR. BASSETT: Sure.

21 THE COURT: After that you're going to go into
22 specifics?

23 MR. BASSETT: Well, after that I'm going to talk about
24 privilege issues.

25 THE COURT: So why don't we address the custodians and

1 the scope of the review.

2 MS. DALE: Good afternoon, your Honor. Margaret Dale
3 from Proskauer Rose for the Oversight Board.

4 And I will take on the two issues that we just
5 discussed, the email custodial accounts and the issue of the
6 custodians. Some of my colleagues will do some of the other
7 issues. We'll get up and down as appropriate.

8 I did want to address the points that Mr. Bassett made
9 at the outset today. With respect to the supplemental
10 submission that we made, we made that at the request of
11 Judge Swain, who asked us to provide additional factual
12 background for the settlement that we were proposing. We also
13 when we submitted that supplemental -- those supplemental
14 submissions, we substantially narrowed the scope of the order
15 that we were asking the court to enter, and the judge -- I'm
16 not going to read this, but on the -- at the July 11th hearing
17 on page 7 of the transcript, she identifies the approval that
18 is being sought now, as opposed to before -- you know, as
19 opposed to before, and also goes through what we're -- what she
20 is not being asked to approve any longer with respect to the
21 RSA.

22 And I think that's important because she goes on to
23 say -- I'm obviously still reading, looking at the transcript
24 now, page 8. We all know this is the standard is whether --
25 the court has to assess whether the proposed settlement falls

1 below the lowest point in the range of reasonableness, and she
2 goes on and she says, We have to look at the Jeffrey factors,
3 and we have all these -- I think most of us now have those
4 tattooed on our brains, the four Jeffrey factors. And then she
5 says at the bottom of page 8, while -- quote, While as the
6 Supreme Court stated in the *TMT trailer* case, the court must
7 consider evidence that is relevant to a full and fair
8 assessment of the wisdom of the proposed compromise. The court
9 recognizes that its task on this motion practice is not to
10 determine whether the compromise embodied in the portions of
11 the RSA presented for approval is the wisest. And I'm going to
12 stop the quote there. So with that background, you know, we
13 disagree vehemently with the UCC's suggestion that somehow this
14 has exploded the scope of discovery, as opposed to narrowed it.
15 So now, I'll pick up on the two topics.

16 THE COURT: So you have repeatedly stated, your
17 declarants have repeatedly stated, that there are a number of
18 factors that led them to believe that this is the appropriate
19 resolution, and among those have been the trans -- the
20 transformation project, the -- the cap on rates, and there was
21 certain goals that -- that the government entities had set and
22 that the -- the declarations say that this settlement is the
23 best resolution reaching those goals. So you have put on the
24 table the goals, right?

25 MS. DALE: And they're goals, you're right, your

1 Honor. We talked about the goals. We were giving the factual
2 background about how we came -- how the parties came to the
3 settlement, and you touched on this before, as did Mr. Bassett.
4 We produced a ton of documents relating to the communications
5 and their back and forth, but those -- those -- the motivations
6 of the parties is not one of the relevant factors under
7 Jeffrey -- Jeffrey, and I really -- and I'll speak to this as
8 we go on, but I -- we don't see how the UCC is matching up what
9 it's looking for in addition to what we've already provided to
10 one of the factors that this -- that the court is going to be
11 considering. I think that, you know, that goes to irrelevance.
12 That goes to lack of efficiency. Your Honor mentioned the time
13 frame that we're under to manage this process.

14 So we were asked to provide some of the factual
15 background for how we got where we got to. We've provided it.
16 All the -- I think with the exception of Mr. Sobrino, all of
17 the declarants are going to be deposed, your Honor, and that's
18 in another --

19 THE COURT: And what's happening with Mr. Sobrino? He
20 has been withdrawn?

21 MS. DALE: My understanding is we are withdrawing his
22 declaration in its entirety, and I can let Ms. McKeen speak to
23 this directly.

24 MS. McKEEN: Good afternoon, your Honor. Elizabeth
25 McKeen with O'Melveny & Meyers on behalf of AAFAF and PREPA.

1 Yes, your Honor, Mr. Sobrino is no longer an employee
2 at AAFAF. We do not intend to present him as a witness at the
3 hearing, and he is no longer within AAFAF's control.

4 THE COURT: But do you expect to have a different
5 witness or you don't know yet?

6 MS. McKEEN: We don't know yet, your Honor.

7 THE COURT: Okay.

8 MS. McKEEN: Thank you.

9 MS. DALE: So, your Honor, if I could take up the two
10 issues now. The request for the nonemail communications.

11 Again, I would start with saying that there's no
12 indication by the UCC how these communications map to any of
13 the Jeffrey factors and, in fact, we think they do not map to
14 those factors.

15 The state of mind or the motivations of the
16 negotiators, that's not an issue.

17 The collection of material from people's personal
18 devices is incredibly invasive, expensive, and time-consuming,
19 your Honor, and I don't -- I'm a commercial litigator. I don't
20 routinely get text messages in discovery unless somebody makes
21 a showing that text messages are relevant to the issue.

22 THE COURT: Well, let me ask you this. Are
23 there -- are there personal phones and work phones?

24 MS. DALE: My understanding for the Oversight Board is
25 that there are personal devices, not -- not a -- it's not like

1 a phone that the FOMB gives to either staff or its -- the
2 members of the board, no.

3 THE COURT: So they're all using their personal
4 communications.

5 And when you searched for email, what did you search?

6 MS. DALE: We -- and Ms. Stafford, who is here, who
7 knows this much better than I, so in case I say anything wrong
8 she'll correct me, but in terms of our email communications,
9 your Honor, we have been searching both the promesa.gov email
10 addresses for staff and board, as well as members of the board
11 have other email addresses where they work, for example, and
12 potentially also Gmail. We have gone to get personal email
13 communications as well. That said, your Honor, that's when we
14 go and collect, which we have been doing routinely.

15 In this case, we have not produced email from all of
16 the board members. We have produced email from Ms. Jaresko and
17 Mr. Figueroa, three Proskauer Rose partners, who were
18 negotiating the deal, and we facilitated the email production
19 by two Citibank witnesses, David Brownstein, who was the lead
20 negotiator for the government parties on the deal; and James
21 Castigliani, I think I might have said that wrong, but James
22 Castigliani, who has worked with David and supported him at
23 Citi.

24 THE COURT: The problem that I'm having, I'm not
25 talking about the scope of the production right now, but to the

1 extent that people communicate these days, even I who do not
2 have a Facebook account communicate by text. So -- and use
3 that interchangeably with email.

4 MS. DALE: But there has been no -- there has been no
5 showing that that's the case that people interchangeably use
6 text to communicate --

7 THE COURT: But what he's saying is that you haven't
8 proven it one way or the other; that you're putting in a
9 statement that says, I don't know. I haven't asked. I don't
10 know.

11 MS. DALE: Your Honor, we -- we know that people use
12 texts to communicate. What we don't know is -- and what we
13 don't think is relevant at all in this matter is whether people
14 used texts to communicate substantive communications relating
15 to the negotiation of the RSA. And, in fact, whether
16 they -- if -- we've produced the email communications relating
17 to the negotiations of the RSA. The only thing we think that
18 goes to is the fact that this was an arm's length negotiated
19 agreement.

20 What else are we trying to get at? What is the --
21 what is the benefit of taking the enormous intrusion into
22 people's personal devices to collect that information, the time
23 and the expense.

24 Now, if Ms. Jaresko is talking to -- and I don't --
25 I'm just making this up, but if Ms. Jaresko is emailing her

1 lawyers, that's privileged. So now we're going to have to go
2 through another layer of privilege. We've done --

3 THE COURT: Why is that different than your email
4 search?

5 MS. DALE: Because of the -- because of the intrusion
6 and the expense and the lack of evidence that there's anything
7 to be found there that would be germane to the Jeffrey factors
8 that we're supposedly handling this. Why did we do an email,
9 because, your Honor, because we -- we produced email, because
10 that has become what you have to do, and so we gave email
11 communications. I mean, we said at the beginning we don't
12 think the email communications concerning the negotiations of
13 the RSA is relevant, but, you know, we'll go do it, because as
14 I said earlier, we have a promesa.gov server, so there are
15 servers that we can easily get to without having to take
16 anybody's device.

17 And the Oversight Board at least, I can't speak for
18 anybody else, we have been going every once in a while out to
19 our board members and saying, can -- you know, can we take your
20 work email or whatever -- whatever any other email that you're
21 utilizing, can we collect that, please, so that we have it.

22 So, you know, that's why email has become acceptable
23 in terms of the burden to do it, but we said -- and, your
24 Honor, to your other point, we have produced the -- the agenda
25 and the presentations that the board received, and we've

1 produced the -- the communications with Ms. Jaresko, who is the
2 executive director, who, you know, is the mainstay person at
3 the board who leads the efforts. And, of course, the board
4 votes. I believe we've produced the unanimous consent or we
5 will. So we are producing the information that I'm not sure
6 what the UCC is looking for to go through and, you know,
7 to -- to separate or all of us, all of the custodians that
8 they're looking for. The board isn't implicated in any kind of
9 scandal, you know, so we just -- everybody with a broad brush,
10 everybody communicates by text, I'm not sure. I don't -- I
11 don't think that's true. They haven't made that showing.

12 So I think that -- I think the -- the time, expense,
13 intrusion, and lack of relevance to nonemail communications
14 should result in the rejection of that request.

15 In terms of the custodians, I detailed who we produced
16 from, and we've -- we've said we would make David Skeel
17 available, he's one of the seven board members, for a
18 deposition. They have, again, we believe, the email that's
19 relevant or not even relevant, but at least the back and forth
20 on the negotiations of the RSA to the extent that they believe
21 that that's relevant or material here.

22 THE COURT: I understand that you have not produced --
23 you have not reviewed his files as a custodian?

24 MS. DALE: Correct. For this purpose.

25 THE COURT: For this purpose?

1 MS. DALE: Right.

2 THE COURT: But you have -- you have produced the
3 others who are being produced as witnesses, but not him?

4 MS. DALE: Correct, your Honor.

5 THE COURT: So and --

6 MS. DALE: Well, Mr. Figueroa is the transformation
7 manager for PREPA at the board. He's not a witness. They
8 haven't sought to take his deposition. We just thought because
9 of the role that he plays at the board that he would be a
10 relevant custodian.

11 THE COURT: But Ms. Jaresko --

12 MS. DALE: Ms. Jaresko --

13 THE COURT: -- you have produced?

14 MS. DALE: I have -- we have.

15 THE COURT: She has been a custodian?

16 MS. DALE: Yes, ma'am.

17 THE COURT: And will be deposed?

18 MS. DALE: Correct. And she put in the declaration,
19 your Honor. Unless have you --

20 THE COURT: And you selected Mr. Skeel, why?

21 MS. DALE: Excuse me.

22 THE COURT: Why did you pick Mr. Skeel?

23 MS. DALE: We -- we did not pick Mr. Skeel.

24 THE COURT: Oh, I'm sorry.

25 MS. DALE: I believe the UCC identified him as a -- as

1 a witness that they would like to depose. He's very well known
2 in bankruptcy -- the bankruptcy area and I think has written on
3 the topic and things.

4 THE COURT: Okay. So -- all right. Well, let me hear
5 from who -- everybody on this, and then we'll continue our
6 discussion.

7 MS. PAVEL: Good afternoon, your Honor. Ashley Pavel
8 from O'Melveny & Myers on behalf of AAFAF and PREPA.

9 I think your Honor had it just right a little bit ago
10 when you were talking to Mr. Bassett that what's left at issue
11 in this motion to compel are not the core relevant documents
12 but people's communications about the goings on, and I think
13 it's important to remember that the Jeffrey factors require an
14 objective inquiry into the reasonableness of the settlement
15 based on the final agreement as it was executed as compared to
16 the realities of the litigation.

17 What everybody said amongst each other or to others
18 along the way just isn't all that relevant. And as Ms. Dale
19 said, we've taken the position all along that nobody's
20 communications are actually relevant. As an accommodation and
21 as a method to try to reach a compromise with the Committee,
22 we've agreed to produce nonprivileged communications because
23 under the time frame we're under we found it more efficient and
24 more reasonable than litigating a motion to compel about those
25 communications, but the Committee's demands go one step forward

1 and ask for everybody's communications about everything. And
2 what you haven't heard is any real articulation as to how that
3 would map to the Jeffrey factors.

4 THE COURT: I think he has actually framed the issue
5 slightly different, which says, assuming that your agreement as
6 to the scope of the search is supportable, you haven't
7 conceded, but let's assume that. Why should you be limited to
8 these emails and not include commonly used other methods? And
9 I have to say that I don't have anything here that says from
10 anybody, from any of the custodians, I don't use this for
11 personal.

12 I think the ad hoc is in a different situation. The
13 Ad Hoc Group, I believe, has submitted information to that
14 effect, but I don't have any records from any of the government
15 entities, let me use that phrase --

16 THE WITNESS: Uh-huh.

17 THE COURT: -- that says, I don't use my text
18 messaging, and I don't see how the burden of specific text
19 messages by and between certain given individuals is more
20 difficult to find than an email. I --

21 MS. PAVEL: Well, I think it's important to remember
22 burden is not the only proportionality factor. It's also about
23 importance to the litigation and the benefit outweighing the
24 burden.

25 THE COURT: But I don't know. I don't know. I mean,

1 you've made a statement that says I've searched the email, and
2 I understand it theoretically. I understand, you know, looking
3 at anybody's personal information is more complicated than
4 looking at the work server, but you have looked at personal
5 information, and I don't know why there's a distinction between
6 email and texting, for example, without any understanding or
7 any statement by any of the custodians that says, listen, if I
8 sent to -- if I sent a text, it was once in a lifetime. That's
9 not how I communicated. I don't have any of that kind of
10 record.

11 MS. PAVEL: I understand that, your Honor. I think
12 our response would be that the documents that are relevant and
13 important to the issues before the court are the key economic
14 analyses, the financial data that we've all produced, and
15 collecting personal devices not only from the custodians we've
16 designated, but the Committee wants them from a host of other
17 people.

18 THE COURT: This is a step at a time.

19 MS. PAVEL: Okay.

20 THE COURT: It is a step at a time, but I feel that
21 we're talking a little bit abstractly when the information is
22 in your client's phone. I mean, if you've got -- if your
23 client came over to you and said, listen, all of my
24 communications are my text messages, and I'm not giving them to
25 you, you would have a different fight with me. Your fight with

1 me would be, look, I know that they're there, but they're so
2 irrelevant, and it's -- I'm just not giving it to you. And
3 we'd have that fight. But right now I'm talking about
4 something I don't even know what scope we're talking about.
5 You made a line, and I'm not understanding how you get to make
6 that line without any support. To both -- I mean, it's to all
7 the government entities. It's just a distinction I'm not --
8 I'm not understanding how you search somebody's personal email
9 account and you say, I'm not going to search their text
10 messages. The same -- the same limitations can apply. You can
11 say it's only by and between people who are on the board or
12 whatever.

13 MS. DALE: Your Honor, it's Margaret Dale again.

14 I don't think it's exactly the same thing. I don't.
15 I disagree. I think the way people use their telephones as
16 your question before was, you know, does the board give their
17 members or their staff phones to use for pers -- for work
18 purposes. My understanding is no, they don't, but people are
19 using their own personal device, and I -- I asked this question
20 before we got here today. You know, collecting text messages
21 you have to go collect all of the text messages off of that
22 person's device. You can't just search by -- the way -- you
23 know, with email we say, okay, we want between this, you know,
24 this domain name and this domain name, or, you know, or discard
25 everything that's newyorktimes.com, because we don't need that,

1 but there's ways that you can completely block off aspects of
2 emails that is not as easy to do in text messaging, and I don't
3 even -- I don't even know how to do it in a chat room or
4 anything like that. But I did ask about text messaging. And I
5 was told it's not as easy. So you are -- you know, you are
6 getting, Honey, I'll be home at five o'clock or whatever, and
7 people are more reticent to hand over their phone and say, you
8 know, take -- yeah, take it all. And so you do have to address
9 that with people, and I guess that you're saying, well, we
10 should have gone and gotten some statements from our clients
11 that said, you know, we don't -- we didn't use our text
12 messages to communicate substantively about the RSA
13 negotiations, but our position was the communications like that
14 aren't relevant to the inquiry that the court's saying it's
15 looking at, because as Ms. Pavel said, they have the documents.
16 They have the underlying financial analyses, and they're going
17 to -- they're going to ask these people questions at
18 deposition, but what their motivation was or, you know, whether
19 Mr. Skeel said he thought it was a good deal or a bad deal, I
20 mean, I don't -- I'm not sure that makes any difference here.
21 So, you know, the time, the expense, the intrusion all for us,
22 counsel, and, you know, the time that we had to do -- to get
23 this done counseled against, you know, giving that -- giving
24 that at that point in time.

25 THE COURT: Thank you.

1 MS. PAVEL: Unless your Honor has any more questions
2 about text messages, I would like to move on to custodians.

3 THE COURT: I think we're ready to move on.

4 MS. PAVEL: Okay. So just by way of context, AAFAF
5 and PREPA, unlike the government parties, put in six document
6 custodians, the two primary outside counsel, who advised both
7 the AAFAF and PREPA, three financial advisors from Ankura, and
8 Christian Sobrino, who was the key government decision-maker.

9 Mr. Bassett has expressed a desire to have people from
10 PREPA, Nelson Morales, and Mr. Ortiz, Elia Diaz, to be added as
11 custodians, but what is important to remember is that PREPA and
12 PREPA's management didn't negotiate the RSA. As a matter of
13 Puerto Rico law, AAFAF is the sole government entity with
14 authority to negotiate restructuring agreements, and those
15 restructuring efforts were led by outside counsel from
16 O'Melveny & Myers, with support from Ankura working with
17 Mr. Sobrino, and so we picked the six people who were likely to
18 have the materials.

19 Another reason that Mr. Bassett brought up that
20 various people from PREPA and Mr. Loran from AAFAF should be
21 included because they may have transformation-related
22 materials, but the issue before the court aren't completely
23 relitigating the transformation. Yes, transformation was
24 listed as one of the potential benefits that the RSA would
25 remove some litigation uncertainty from that process, but it's

1 also important to remember that PREPA is not negotiating that
2 process either. The public-private partnership authority is
3 running that business process and -- or the bidding process,
4 excuse me, and the Committee has independently subpoenaed P3,
5 who's represented by separate counsel, and the Committee is
6 receiving documents from them. And so it doesn't really make
7 sense, and it's unduly burdensome for us to go out and collect
8 additional materials from PREPA trying to locate duplicative
9 materials from what P3 would have about the current status of
10 transformation.

11 THE COURT: What about Mr. Morales, though, who I
12 gather you've identified as someone with information about the
13 security interests?

14 MS. PAVEL: We identified Mr. Morales, the chief
15 financial officer, in response to an interrogatory asking for a
16 person with knowledge about financial issues, like the
17 preparation of budgets and flow of funds under the trust
18 agreement.

19 PREPA in its ordinary course of business is not
20 valuing the bondholders' security interests, and we've produced
21 the financial reporting, although we didn't name him as the
22 email custodian. The revenue and expense reporting has been
23 produced.

24 And also Mr. -- Mr. Morales in opposition to one of
25 the Fuel Line Lenders' motions earlier on in this proceeding

1 submitted a sworn declaration explaining that he was not
2 involved in the RSA negotiation and that his finance director
3 was not asked to evaluate any.

4 THE COURT: So was Mr. Diaz though as chairman of the
5 PREPA board being kept apprised of the negotiations of the RSA?

6 MS. PAVEL: So PREPA board and AAFAF's board each
7 approved the final RSA that was mentioned in Mr. Sobrino's
8 declaration. There may have been updates to Mr. Diaz. We have
9 produced some board minutes. I don't know, as I sit here, if
10 they cover that time period, but he wasn't involved in the
11 day-to-day negotiations. Those were done by AAFAF.

12 THE COURT: But somehow the board -- the PREPA board
13 had to be -- there had to be a contact person from the board
14 somewhere along the line.

15 MS. PAVEL: Well, the board did receive a
16 presentation, I think, in late April suggesting that PREPA and
17 AAFAF board both approve the RSA, and Mr. Sobrino was a member
18 of PREPA's board at the time, a member of both the AAFAF board
19 and PREPA's board, and was the ex-officio representative to the
20 Oversight Board. And we had -- we produced emails from
21 Mr. Sobrino.

22 THE COURT: Okay. Is there anything else you wanted
23 to add?

24 MS. PAVEL: No, I think that's everything on
25 custodians and text messages.

1 THE COURT: So this is where I am. I think that since
2 Mr. Skeel has been identified as a custodian -- as a deponent
3 that he should be added as a custodian.

4 I also think that Mr. Diaz as chairman of PREPA's
5 board should be added. I think if Mr. Sobrino is replaced by
6 anyone, I don't know if it's somebody who would have
7 information or if it's going to be somebody totally new, okay.
8 I don't profess to guess what that answer is, but if it's
9 somebody who may have historic records they should be added as
10 a custodian.

11 I'm wavering on expanding the scope. I'm going to
12 give you all a few days to, if you want, to file a supplemental
13 statement as to whether or not these alternative communication
14 methods may have some relevant information or not, but you
15 don't have to file anything.

16 What's today, Tuesday. How about by Monday? All
17 right.

18 All right. I haven't heard from the ad hoc committee.

19 MR. HAMERMAN: Hi. Good afternoon, Judge.

20 Natan Hamerman from Kramer, Levin, Naftalis & Frankel for the
21 ad hoc group of PREPA bondholders.

22 I'll address the topics that I guess are so far up for
23 grabs which relates to custodians and text messages.

24 The Committee contends that receiving documents from
25 the ad hoc group's five lead negotiators was not sufficient and

1 it wants documents from four more custodians, the most senior
2 responsible person and a person involved on a day-to-day basis
3 to Ad Hoc Group members. This prong of the committee's motion
4 should be denied for multiple reasons.

5 First, you don't even need to address the question of
6 custodians because the Committee until a few minutes ago had
7 effectively conceded that the discovery it seeks from the Ad
8 Hoc Group does not relate to any relevant issue at the 9019
9 hearing. According to the committee, the central -- this is a
10 quote, "The central issue relating to the 9019 motion is the
11 reasonableness of the government party's decision to enter into
12 the RSA." That's from paragraph 16 of their renewal. That has
13 nothing to do with the Ad Hoc Group.

14 In paragraph 4 of their renewal, they list a series of
15 topics relating to the 9019 motion about which they contend
16 they need discovery. They said basically the same list here
17 today.

18 None of those topics relate to the Ad Hoc Group.
19 They've provided in each of their submissions to the court
20 lists and lists and lists of specific requests, RFP No. 7, RFP
21 No. 8 to PREPA, to AAFAF, to the Oversight Board. Not one of
22 them is to the Ad Hoc Group.

23 And we made all of these arguments in our opposition
24 papers, and in their reply papers they didn't come back with
25 something different. They didn't come back and say, oh, yes,

1 your discovery is relevant to this topic that's at issue or we
2 need an answer to this RFP as to the Ad Hoc Group. Instead,
3 they just continued to focus on the communications with the
4 government parties -- I'm sorry. On the government parties'
5 judgment and the RFPs that went to the government parties.

6 So the only subject that our documents could
7 conceivably relate to is whether the RSA was negotiated in
8 arm's length and in good faith. And that can theoretically be
9 an issue in some 9019 motions, but it's not in this one.

10 The Committee has never argued that the RSA is not the
11 result of arm's length negotiation. To the contrary, it is
12 repeatedly contended and admitted that the RSA negotiations
13 were at arm's length, including again in its reply papers here.

14 So even if the Committee had argued that the
15 negotiations were relevant, which they didn't do, that brings
16 us to the custodians. That still would not necessitate
17 documents from the Ad Hoc Group members because the
18 negotiations were led by the Ad Hoc Group's professionals, not
19 its members.

20 In its reply, basically the only thing the Committee
21 says about this is we haven't supported our position on this
22 custodian question. We only point to the absence of certain
23 documents by our clients. But, first of all, they have the
24 burden of proof on this issue, not us, and we certainly did
25 support our position.

1 First, we've made repeated representations to your
2 Honor subject to Rule 11 that the professionals led the
3 negotiations on the ad hoc group's basis.

4 Second, there is a sworn declaration by David
5 Brownstein, the Oversight Board lead negotiator, in which he
6 says in paragraph 17 that the negotiations on the Ad Hoc
7 Group's behalf were predominantly led by its professionals.

8 Third, the absence of documents of any emails with our
9 clients' names on them other than a handful is significant.
10 This isn't just in our production. This is any production from
11 anybody else. Surely, if our clients had been actively leading
12 negotiations, communications with their names on it would have
13 appeared in the productions by various parties.

14 And fourth, in contrast to the absence of emails with
15 our clients' names on them, there's the presence of thousands
16 of pages of negotiation communications that have been produced
17 by us and other parties confirming that the Ad Hoc Group's
18 professionals were the ones to lead the negotiations on its
19 behalf.

20 Fifth, the single document that the Committee attaches
21 to its paper -- to its papers actually supports our position.
22 That's Exhibit 10 to their renewal, Judge. In that document,
23 that's one of the handful communications that even has our
24 clients' names on them. One ad hoc group member asked a
25 representative of the Oversight Board to catch up to make sure,

1 quote, "nothing is getting lost between all the
2 intermediaries."

3 Now, if that member had been leading negotiations
4 himself, sending such an email would not be necessary because
5 there would be nothing to catch up about, and he wouldn't be
6 referencing intermediaries. So the email, in fact, proves our
7 point.

8 A few moments ago, when Mr. Bassett was up here, he
9 mentioned one other subject, which we had frankly thought was
10 off the table based on prior communications, which was, gee,
11 what if there are communications between -- you know, with one
12 of the Ad Hoc Group members saying this is the steal of the
13 century or we don't really have security.

14 And this goes back to a comment that Ms. Pavel was
15 making, which is the factors that are at issue here are
16 objective ones. That's what Jeffrey says. That's what the
17 *TMT Trailer versus Anderson* case says. It's not the subjective
18 views of any particular person that determines whether the
19 settlement value is good or bad or somewhere in between. These
20 are objective criteria. So even if such a communication
21 existed, it would not be relevant.

22 And I would note, your Honor, that we -- this is not
23 the first time a request for documents like this has been made.
24 In our original opposition to the original motion to compel,
25 when we thought this issue was still ripe and had not been

1 taken off the table, we cited various decisions, mostly in
2 transcripts from the *Dolan* case, the *Genco* case, the *Energy 21*
3 case, where parties opposing a particular settlement or plan of
4 reorganization asked a group of creditors or bondholders for
5 documents relating to what they thought about the settlement,
6 and the courts in all three of those instances said that those
7 documents are not to be -- are not required to be produced
8 because they're not relevant. The individual creditors' view
9 as to these subjects don't matter.

10 By contrast, the Committee has not cited any decisions
11 that would indicate that such documents are relevant. So I
12 think that on this particular issue, there's no basis to -- to
13 find any relevant subject matter in any of the communications
14 that our clients might potentially have. The bottom line on
15 this subject, Judge, is that the burden to the Ad Hoc Group
16 associated with producing four more custodian documents on top
17 of the five lead negotiators substantially outweighs any
18 benefit from that production particular -- particularly on an
19 issue that the Committee has not been focused on, hasn't
20 identified how it relates to the 9019 hearing, appears totally
21 irrelevant, and at a minimum is very far from the heart of the
22 9019 hearing. And particularly under Rule 45, which the
23 committee does not dispute governs the Ad Hoc Group subpoena.

24 Let me take one last moment on burden because we heard
25 some comments from Mr. Bassett about the size of the

1 settlement. Just because there are big dollars at issue
2 doesn't mean that we act wastefully or that we allow discovery
3 that has no relevance. It just delays or harasses people. If
4 it did, Judge Swain wouldn't have now excluded witnesses and
5 depositions and things of that nature repeatedly. So I just
6 don't think that that is really getting to the core of the
7 issue.

8 That's all I have on custodians, but I'll speak for a
9 very brief moment on text messages. We are a little bit
10 differently situated than the other parties. We were asked by
11 the Committee to go to our various custodians whose documents
12 we produced and confirmed that they did not have any
13 substantive negotiations about the preliminary RSA, the
14 settlement. They asked us to do -- by text message or similar
15 messaging system, they asked us to do that. We did. Each one
16 of them confirmed, in fact, that they did not have such
17 messages of that kind of substantive nature.

18 You know, in the face of that producing such
19 communications is burdensome, it's significantly disruptive, it
20 relates -- it raises all of the privacy concerns that your
21 Honor has heard about already here today. It doesn't work the
22 way email does. Text messages don't get filtered the way
23 emails do with one party and one message and specifics. You
24 get a giant screen of messages, and it's much more difficult to
25 go through.

1 So in the face of the representation from our
2 respective custodians that they did not have substantive
3 communications by text, we think there's really no reason to do
4 that here.

5 Mr. Bassett also mentioned other documents other than
6 emails. I just want to note that we did look for other
7 documents and have produced nonemail documents as part of our
8 production. So that's not an exclusion that we applied, Judge.

9 Unless have you questions on this, I'm done. Thank
10 you.

11 THE COURT: Thank you.

12 Mr. Bassett, do you want to get the last word in?

13 MR. NATBONY: Your Honor, it's short.

14 THE COURT: Okay.

15 MR. NATBONY: Thank you, your Honor. William Natbony
16 from Cadwalader on behalf of Assured.

17 On the three issues that your Honor mentioned, first,
18 the UCC's reply and its Exhibit A does not indicate that it
19 have any issues with respect to Assured's custodians. So
20 that's not an issue to address for Assured.

21 As to hard copy documents, Assured did, in fact, agree
22 to undertake a reasonable search for responsive and
23 nonprivileged documents, including hard copy and did, in fact,
24 produce those.

25 And with respect to electronic messages, as did with

1 the ad hocs, Assured did, in fact, communicate with its client,
2 and in accordance with the Assured's internal policies
3 confirmed, and it's in our papers, that the relevant Assured
4 custodians, including Assured's negotiator of the RSA and
5 Assured's outside counsel, negotiated the RSA and conducted all
6 negotiations by email, phone, or in-person meetings, not texts,
7 not any other of the electronic-type communications that are
8 described in the UCC's papers.

9 That's all I have, your Honor.

10 MR. BASSETT: So just a few points in reply to the
11 arguments that we've heard, your Honor. I'll try to be brief.

12 On the issue of the -- the text messages and other
13 personal devices, I think the court -- one thing I want to make
14 clear is the court made a comment at one point, I think,
15 that -- that personal emails had been searched and provided.
16 That's --

17 THE COURT: I think that was the representation.

18 MR. BASSETT: If that's -- we have not seen those,
19 your Honor. I'm happy to be corrected by Ms. Dale or someone
20 else, but the only emails we received are from official email
21 accounts.

22 MS. DALE: It's Margaret Dale.

23 Just to clarify, we have collected from the members of
24 the board personal email accounts. The folks who are the
25 custodians here, they didn't have personal email accounts. We

1 have only produced documents from their promesa.gov email
2 accounts. So it was collection versus production for
3 Ms. Jaresko and Mr. Alejandro Figueroa.

4 THE COURT: Okay. But that's because there were
5 none -- there was no personal account?

6 MS. DALE: That's my understanding, yes.

7 MR. BASSETT: Just to clarify that point. I'm not
8 sure if it's that they don't have them or there's a
9 representation that the government parties are willing to make
10 that some assurance that they can make through a declaration of
11 these individuals or what it might be that they did not use
12 personal email accounts to communicate. I just want to refer
13 back again, federal indictment alleging that officials in
14 Puerto Rico specifically used personal nongovernment email
15 accounts in furtherance of a conspiracy. I think it's a
16 relevant question.

17 MS. DALE: We can make a representation that neither
18 Ms. Jaresko nor Mr. Figueroa used personal email accounts for
19 their business at the board.

20 THE COURT: I have no reason to disbelieve that. I
21 will accept that.

22 MR. BASSETT: I'm sorry.

23 THE COURT: Without evidence to the contrary, I have
24 no reason not to accept counsel's representation.

25 MR. BASSETT: Your Honor, we don't know what we don't

1 know. I --

2 THE COURT: I don't know what to say to that.

3 MR. BASSETT: Okay. So other issues.

4 THE COURT: Do you agree that the collection though of
5 the text messaging is a different -- a different burden than
6 the collection of emails?

7 MR. BASSETT: I would -- I would agree that it might
8 not be as easy as searching emails that are in one central
9 location, but I disagree wholeheartedly that any incremental
10 burden that is associated with producing text messages somehow
11 shields them from disclosure in this case given the likely
12 relevance of those materials. In fact, as your Honor has
13 pointed out, there has been no showing that they're not
14 relevant. There has been no representation that they don't
15 exist. There has been no representation that -- that the text
16 messages that do exist aren't related to this dispute. I think
17 given everything at stake here, given what is -- what we sought
18 in discovery and what's undeniably relevant to this dispute,
19 the court should compel the government parties to collect
20 devices.

21 I mean, the idea that it's invasive or that some
22 custodians would not like to give over their devices is not
23 remotely a reason for them to not be provided. I mean, just
24 out of personal experience, I was involved in a bankruptcy case
25 six months ago on the other end of this, which is a fraction to

1 say the least of the magnitude of this case, and everybody
2 produced text messages because they were called for by the
3 requests. And the individuals in question had relevant text
4 messages, and it wasn't burdensome. We had a vendor go to the
5 person, image the devices, and search their text messages for
6 key words to figure out of all the texts on their phone, which
7 ones have the hallmarks of being relevant because they touched
8 on certain key words. It's -- there has been no -- there has
9 been no showing that it's particularly costly or difficult to
10 do this because it's not.

11 And I also want to be clear that, you know, we have
12 been talking about text messages, but that's not the full
13 extent of what we're seeking. I mean, in fact, it's anything
14 else that may be recoverable from their mobile devices or other
15 devices on which they use social media or other chat platforms
16 like whatsapp, like the Telegram chat that has led to the
17 recent scandal. All of those forms of communication are
18 equally relevant.

19 We're happy to have a conversation with the government
20 parties about exactly how to go about collecting those
21 materials from their phones and what can be done to gather
22 them, but they have not been willing to have that discussion.
23 So, again, it's not -- it's not just text messages.

24 THE COURT: And you're seeking those from the
25 custodians who have already produced documents as well?

1 MR. BASSETT: Absolutely.

2 THE COURT: Like the lawyers and the financial
3 advisors that have served as the custodians for the documents
4 do you -- are you seeking text messages from them as well?

5 MR. BASSETT: Absent a showing to the contrary that
6 they don't have them, yes. We're happy to have that
7 discussion. I think as it relates to certainly the nonlawyers,
8 the financial advisors, the individuals at PREPA and AAFAF and
9 the Oversight Board, including the board members, absolutely we
10 are seeking text messages from all those individuals, and we're
11 seeking it from everybody else as well, but again, we have not
12 been able to have any dialogue on this issue at all beyond
13 you're not getting anything other than emails. So that's part
14 of the reason it's a little bit difficult to talk about
15 specifics in terms of burden, in terms of what's available on
16 these phones. We've not had that dialogue at all.

17 THE COURT: Okay.

18 MR. BASSETT: In terms of the custodians, your Honor,
19 I mean, as to David Skeel, we appreciate your Honor indicating
20 that we should have his documents, but there's seven board
21 members, and we don't see a principled reason to just have his
22 documents. I mean the board acts through its members, each of
23 which has a vote to approve this transaction. We've sought one
24 deposition initially of Mr. Skeel and not because we believe
25 that he is the only one who has relevant documents or that he's

1 more likely to have information or he's more relevant to have
2 information than other board members, but because we are
3 mindful of the limited time we have and the number of
4 depositions that can be taken. We have not noticed seven
5 depositions. We've noticed one to at least talk to a board
6 member initially and go from there. But to only get his
7 documents, it doesn't make sense to us.

8 I mean, again, to just look at other contexts, if this
9 was any corporate litigation regarding a merger or some other
10 decision that has been made by that corporation that is at
11 issue, the first custodians would be the board members because
12 they're the people who make the decision.

13 THE COURT: Right, but I think this is a difference.
14 I mean, the report before me seems pretty clear that you have
15 the information. The -- the people who participated in the
16 negotiation have been identified as custodians, and you do have
17 their records.

18 You also have records, official records, from the
19 board itself. In my view, unless -- I'm not seeing a gap. We
20 have a gap for other reasons, and that we will get to on all of
21 the privilege issues, but it seems to me that the information
22 that you have both from the Oversight Board --

23 MR. BASSETT: Just --

24 THE COURT: Let me say from the Oversight Board adding
25 Mr. Skeel is sufficient to cover the decision-makers in

1 connection with the issues being brought up at the 9019.

2 MR. BASSETT: Okay. Just a couple of points of
3 clarification, your Honor.

4 So I talked to my colleague, who is closer to the
5 documents than I am during our break, and as to the materials
6 that we have received regarding presentations to the board, et
7 cetera, I'm told we, in fact, don't have any minutes relating
8 to board meetings from FOMB and AAFAF or PREPA or any documents
9 regarding the voting that took place. We don't have any
10 presentations from AAFAF or PREPA regarding the RSA, even
11 though the Oversight Board has produced some of those that were
12 given to their board. So I think what we do have concerning
13 board member communications and documents that go to their
14 deliberations and decision-making, which is at the center of
15 what's at issue here is again very, very limited. And again, I
16 just -- I just don't see how picking one out of seven is
17 enough.

18 THE COURT: So as I understand it, there's a different
19 issue with AAFAF that will come up, I assume, in the
20 deliberative process discussion, but the Oversight Board has
21 agreed to produce the minutes and the presentations and the
22 votes; is that correct?

23 MS. DALE: Your Honor, it's Margaret Dale.

24 There are no minutes. The agenda is what we produced.
25 That functions as the record of what is, you know, discussed --

1 being discussed at the meeting, and presentations, Board decs,
2 nonprivileged parts have been produced, and I understand that
3 there are a few more cleanups, and there will be a further
4 production this week.

5 THE COURT: Okay.

6 MR. BASSETT: And, frankly, your Honor, that's more
7 reason why what we have is extremely limited. I mean, just
8 seeing the agenda premium of what has been discussed without
9 any communications or any insight into the discussions that
10 occurred. That's what we're not being given.

11 THE COURT: But you also have the documents from the
12 people who would have made the -- the presentations and who
13 provided the information because they negotiate any
14 communications that are nonprivileged?

15 MR. BASSETT: We don't --

16 THE COURT: You have the people who are making the
17 assessment entering the negotiations?

18 MR. BASSETT: I --

19 THE COURT: They have served as the custodians.

20 MR. BASSETT: I don't think that's correct. We have
21 documents from some of the people, the advisors --

22 THE COURT: I believe --

23 MR. BASSETT: -- and people who have -- we have
24 documents from people who negotiated the settlement from the
25 Oversight Board, yes. But what we're talking about is

1 evaluating the reasonableness of the decision to enter into the
2 settlement.

3 THE COURT: And you have --

4 MR. BASSETT: That's what we don't have.

5 THE COURT: -- the documents of the people who have
6 submitted declarations?

7 MR. BASSETT: We do have the documents of the people
8 who have submitted declarations, yes.

9 THE COURT: Okay.

10 MR. BASSETT: And by the way, there -- you know, we
11 have been talking about advisors to the Oversight Board and
12 AAFAF, and what I had forgot to mention is with respect to the
13 Oversight Board there are two Citigroup custodians who
14 submitted declarations, Frederic Chapados and David Brownstein,
15 his name has come up. We have also gotten documents from a
16 couple of other Citigroup custodians, but we have an unresolved
17 issue with regard to getting text messages from the custodians
18 as well. I just wanted to draw to your Honor, they are part of
19 the group of custodians we are talking about when we talk about
20 the FOMB.

21 THE COURT: Okay.

22 MR. BASSETT: And then just a quick last point on the
23 custodians, you know, as to the PREPA and AAFAF, and again I
24 guess we can talk about that later if it comes up in
25 deliberative process, but, you know, the CEO of the debtor, who

1 is the -- the key party in this entire dispute, the key
2 decision-maker, who like I said is, you know, talking with the
3 media and panels about the privatization as recently as
4 yesterday sees no principal basis to not have the documents.

5 THE COURT: And this is Mr. Ortiz?

6 MR. BASSETT: This is Mr. Ortiz. The same with the
7 CFO, again, we're talking about a decision made by PREPA. The
8 CEO and CFO both of whom have relevant information that I think
9 the record is pretty clear on that. And that we're not
10 entitled to their documents in this situation and a dispute of
11 this magnitude, I don't see how that is possible.

12 THE COURT: Except that you're not responding to the
13 information that was provided about their roles.

14 MR. BASSETT: But the information that was provided
15 about their roles by counsel is different from what we know
16 about their roles based on the documents that have been
17 produced and what has happened and what's in the public record.
18 I mean, they -- there's documents indicating that the CEO is
19 going to meetings on the privatization. He's commenting on the
20 confidential information memorandum that's provided to
21 concessionaries created by Citibank. There's other documents.
22 Again, he's -- he's the -- he's the CEO, the head of the
23 organization, who is involved in these issues. He's talking to
24 the press about them. I mean, the fact that they say he is not
25 involved is belied by the record.

1 THE COURT: Okay. Anybody want to respond to that?

2 MS. PAVEL: Thank you, your Honor, Ashley Pavel for
3 AAFAF.

4 Mr. Ortiz did not negotiate the RSA. As a matter of
5 Puerto Rico law, it's AAFAF not PREPA who negotiated the
6 agreement. Mr. Ortiz signed the RSA after AAFAF, together with
7 outside counsel, presented the RSA to PREPA's board so that
8 PREPA could sign it. As a matter of Puerto Rico law, it was
9 not Mr. Ortiz or PREPA's management to negotiate that
10 agreement.

11 THE COURT: Would he have been the person that was
12 kept apprised?

13 MS. PAVEL: That would have been Mr. Sobrino, your
14 Honor.

15 THE COURT: Hmm.

16 MS. PAVEL: Mr. Sobrino, as a member of PREPA's board,
17 would have been apprised.

18 THE COURT: And his documents have been subpoenaed?

19 THE WITNESS: His documents have been produced.

20 THE COURT: All right. What is the problem with
21 producing Mr. Ortiz's and Mr. Diaz's documents?

22 MS. PAVEL: It's not that there's any problem per se
23 in doing it. It's that we think we have produced materials
24 from the custodians, who are likely to have information, and
25 the incremental burden of adding another set of custodians and

1 more documents to review would outweigh the benefits of adding
2 more custodians.

3 MR. BASSETT: Your Honor, just real -- just quickly.
4 And I think they've conceded that there's no problem with
5 getting the documents. So I think any argument on burden to me
6 at least is not very persuasive.

7 I wanted to make one quick point regarding this
8 distinction between AAFAF and PREPA and how AAFAF negotiates on
9 behalf of PREPA. They each approved the transaction
10 independently. And, in fact, they had different rights under
11 the transaction. PREPA has a termination right that AAFAF
12 doesn't have. I mean, there are distinctions between those two
13 groups, and they each have their own decision-makers who
14 approved the transaction. We need to see their documents.
15 The -- it's the same as the Oversight Board members. We need
16 to see the notes that they took during meetings, what they
17 considered in deciding that this settlement was in the best
18 interests of their respective organizations. That's all front
19 and center and what they have in paragraph after paragraph in
20 their declarations, talking what they believed when they did
21 the negotiations of the agreement, what motivated them, why
22 this is a good deal for PREPA and AAFAF and Puerto Rico in
23 general. All of those things. That's -- that's the discovery
24 that we need here.

25 THE COURT: So I think the scope of the discovery

1 relating to the deliberative process notes of meetings or -- we
2 haven't heard that yet. We'll deal with that in a moment.

3 I will add Mr. Ortiz and Mr. Diaz as the -- as
4 custodians along with Mr. Skeel. I don't believe any
5 additional information or custodian is needed from the Ad Hoc
6 Group. I didn't see that anything was asked for from Assured,
7 so I assume you don't want me to order them to do anything.

8 All right. With respect to the -- I'm reserving on
9 the scope of the text messaging. I want to think about that,
10 but I will let the government entities -- I believe that
11 Assured and the Ad Hoc Group have established that there is no
12 need to search further for their text messages or other
13 platforms.

14 The government entities either need to supplement the
15 record or I will make a ruling based on the record, as I have
16 now, which is I understand your argument being -- excuse me
17 -- that it's just burdensome and not likely to lead to the
18 discovery of relevant information for the 9019.

19 But I will let you supplement the record on whether or
20 not there's -- these other platforms were used.

21 MS. DALE: Thank you.

22 THE COURT: Okay.

23 MR. BASSETT: And, your Honor, just to clarify,
24 what -- in terms of supplementing the record, this may have
25 been what --

1 THE COURT: They could produce an affidavit, like --

2 MR. BASSETT: Okay.

3 THE COURT: -- what has been produced of where that
4 says -- it will have to be more than -- if it's counsel's
5 representations, which I will take, but it will have to be
6 based in detail on discussions and confirmation by -- with the
7 individual members as to whether or not these platforms were
8 used. All right. I'm not requiring you to do that. If you
9 elect not to do it, it's fine, and I will just make a ruling
10 based on the record that I have.

11 MS. DALE: I will, your Honor.

12 MR. BASSETT: And, your Honor, the one point I would
13 now -- it's just a flag. In terms of timing, I think your
14 Honor is aware of the schedule. We have depositions starting
15 next week, and then it's really three weeks of that, so to the
16 extent that we, you know, get additional documents obviously it
17 creates a problem that that doesn't happen before we start
18 having documents --

19 THE COURT: Well, with the custodians that I've
20 identified, I would expect those to be produced as soon as
21 possible, obviously.

22 Can you produce -- can you produce the affidavits by
23 Friday, and then we can make a ruling at the beginning of the
24 week?

25 MS. DALE: It's Margaret Dale again for the Oversight

1 Board.

2 With respect to supplementing the record, we'll do our
3 best to get you -- if we -- if we do submit something by
4 Friday, as opposed to Monday, your Honor.

5 THE COURT: Yes.

6 MS. DALE: With respect to Mr. Skeel, we -- we have
7 the promesa.gov email collection. So we can look through that,
8 and I guess I'm not sure exactly the scope and timing, but
9 we'll -- we'll get on that right away.

10 I don't know the last date that we collected from
11 his -- his -- his -- he's a professor at UPenn so we have to
12 get his UPenn account. I just don't know what was the last
13 date we collected from him, and I just don't know how long that
14 is going to take. So that could be an issue in terms of
15 timing.

16 THE COURT: It needs to be rolling, right --

17 MS. DALE: Yes, of course.

18 THE COURT: -- you're not going to wait -- you're not
19 going to wait until you have everything?

20 MS. DALE: No. Thanks.

21 THE COURT: Mr. Bassett.

22 MR. BASSETT: And as to -- as to Mr. Skeel and the
23 other custodians, when we talk about, you know, the affidavit
24 and text messages, are we talking about all documents other
25 than official emails that's going to be addressed in that

1 affidavit or are we just talking --

2 THE COURT: It will be the other platforms.

3 MR. BASSETT: Okay.

4 THE COURT: The use of other platforms.

5 MR. BASSETT: But that would -- but that also is not
6 electronic to be clear. So the notes that a board member took,
7 Mr. Skeel in particular, since he has been identified as a
8 custodian now at the meeting, subject to the deliberative
9 process discussion.

10 THE COURT: There's always that one more question that
11 I have to rephrase in my head. As I understand it, the
12 production to date has been documents, nonelectronic documents,
13 as well as electronic emails.

14 MR. BASSETT: I don't believe we've gotten
15 nonelectronic documents from the government parties. I'm happy
16 to be corrected on that, but I -- I don't know that we have.

17 MS. DALE: I think what -- I think what Mr. Bassett is
18 talking about is hard copy notes.

19 Is that basically what you're talking about?

20 MR. BASSETT: That's fair, yeah.

21 MS. DALE: Okay. So we did not produce any hard copy
22 notes. I don't even know if any exist, but right now we have
23 not produced hard copy notes. So that the request, I think, is
24 that we -- if we were to put in something that we indicate
25 whether or not the custodians have notes?

1 MR. BASSETT: I was more asking the question to the
2 court.

3 THE COURT: Why hasn't hard copy documents been
4 included in the production?

5 Is it because everything's electronic?

6 MS. DALE: Pretty much, yes, your Honor, because
7 everything is electronic or -- but we will put -- you know,
8 we'll take that and go back and talk to our custodians and see
9 if there is anything that is written down that is germane, and
10 we'll let you know.

11 THE COURT: I am not excluding -- I don't find it
12 overly burdensome based on this record to produce hard copies
13 information. So if there is responsive material from these
14 custodians that is in hard copy, it should be produced.

15 MS. DALE: Understood.

16 THE COURT: Okay?

17 MS. DALE: Thank you.

18 THE COURT: Before we get to the process can we take a
19 five-minute break.

20 MR. BASSETT: Sure. Thank you.

21 THE COURT: Thank you.

22 THE CLERK: All rise.

23 (Recess from 2:43 p.m. until 2:55 p.m.)

24 THE CLERK: All rise.

25 THE COURT: Okay. Mr. Bassett, we're ready.

1 MR. BASSETT: Yes. So, your Honor, I believe the
2 issues we are going to discuss next are the two privilege
3 issues. I'm happy to go in either order. I was going to take
4 deliberative process first, if that's fine.

5 THE COURT: That's fine. And I need to understand --
6 I don't know actually if you go first or -- or the government
7 goes first on this, because there has been a production of
8 materials relating to the negotiation, as I understand it, but
9 I don't have a full sense of what that is, and so I don't
10 really understand the scope of the privilege that's being
11 claimed.

12 I know you say they're claiming it on everything, but
13 they're responding by saying, "No, we're not."

14 MR. BASSETT: So -- so I'm happy to -- I'm happy to
15 hear from the government on that. The one thing I will note is
16 that we have received categorical privilege logs -- well, we
17 received a categorical privilege log from the Oversight Board.
18 We have not received one from AAFAF and PREPA, but the -- among
19 other things, and we're going -- we're in a dialogue about the
20 contents of the log as we speak, but it doesn't contain yet, at
21 least, although they said they will provide it, the number of
22 documents that are being withheld under each of these different
23 privileges, so we, at this point, don't have a lot of insight
24 into that, but what we do know is that they are asserting the
25 deliberative process privilege over what appear to be large

1 categories of documents. But I'm happy to hear from the
2 government as to exactly how they've drawn that line.

3 THE COURT: Thank you.

4 MS. STAFFORD: Good afternoon, your Honor.

5 Laura Stafford on behalf of the Oversight Board, and I'm happy
6 to address the -- what's actually the very narrow scope of what
7 the government parties have asserted -- the deliberative
8 process privilege over up to this point.

9 The UCC appears to be under the misimpression that
10 we've applied the deliberative process privilege very broadly
11 to resist discovery into negotiations regarding or the decision
12 to enter into the RSA, and that really hasn't been the truth.

13 We've -- as we've been discussing this afternoon, your
14 Honor, the Oversight Board and the other government parties
15 have produced thousands of documents showing the RSA
16 negotiation process and the back and forth between the
17 government parties' advisors and attorneys on the one hand and
18 the supporting holders on the other hand.

19 THE COURT: You have to slow down a little bit.

20 THE WITNESS: Sorry. We've also produced materials
21 that were submitted to the Oversight Board by their advisors in
22 connection with the decision-making process, and those are the
23 agendas and meeting materials that we were discussing so far
24 this morning. All of those are the agendas and meeting
25 materials that were considered and relied upon by the Oversight

1 Board in making the decision to enter into the RSA.

2 To date, the Oversight Board has identified and
3 withheld only two categories of responsive documents pursuant
4 to the deliberative process privilege.

5 The larger category of those relates to the decision
6 to enter into the demand protection term sheet. These
7 communications are ones that took place between the government
8 parties and their advisors and involved analyses regarding the
9 terms that were contained within the demand protection term
10 sheet.

11 THE COURT: Can you say that again.

12 THE WITNESS: The demand protection term sheet.

13 That term sheet addresses the pricing and
14 implementation of demand protection for bondholders in the RSA,
15 including specific charges that will be assessed and how they
16 will be assessed, all of which implicate Puerto Rico's overall
17 energy policy.

18 We have not been asserting the deliberative process
19 privilege over the decision to enter into the RSA at all. As
20 we've discussed, we've produced a lot of information that was
21 put before the board in order to allow it to make that
22 decision.

23 We've also identified a very small number of
24 communications that are related to the decision to certify
25 PREPA's fiscal plan on June 27, 2019. That's really only a

1 very small handful of documents.

2 I don't have the exact number of communications
3 related to the demand protection term sheet, but it's
4 not -- it's not a huge number, but I don't know exactly what it
5 is as I stand here today.

6 So I -- I hope that provides your Honor with some
7 guidance about what has actually been the very narrow scope of
8 the -- the deliberative process that has been asserted to date,
9 and --

10 THE COURT: Why have you asserted it for those two
11 categories?

12 MS. STAFFORD: So with respect to the demand
13 protection term sheet, again, this relates to the specific
14 energy policy determinations that needed to be made by the
15 government as to the scope and extent of charges and how they
16 could be collected from ratepayers. Those sorts of
17 determinations affect overall energy policy for Puerto Rico,
18 and as a result those -- the decision to enter into a term
19 sheet with the specific charges and how they -- those charges
20 would be collected, the various decisions that needed to be
21 made in order to reach that demand protection term sheet
22 result -- were the result of a lot of back and forth between
23 PREPA, AAFAF, and the Oversight Board and their advisors.

24 THE COURT: And how does this fit into the RSA?

25 MS. STAFFORD: That demand protection term sheet is

1 one piece of the RSA. It's a schedule that's actually attached
2 to the RSA, and it was one of the main features that needed to
3 be negotiated between the preliminary RSA and the definitive
4 RSA, and the decisions that needed to be made by the government
5 parties included how those transition charges should be
6 structured and collected from ratepayers.

7 THE COURT: So you have produced the final --

8 MS. STAFFORD: That's correct.

9 THE COURT: -- piece that is part of the RSA?

10 And have you provided factual information that was
11 provided to the board in voting on it?

12 MS. STAFFORD: That's correct, your Honor. We've
13 provided factual information that was provided to the board in
14 voting on it. We've also on various drafts of the demand
15 protection term sheet that were exchanged before the common
16 interest period with Assured took -- really solidified in
17 March -- on March 25th of 2019. Any demand protection term
18 sheets that were exchanged between the parties at that time
19 were produced, and there's a number of nonprivileged redacted
20 versions of documents that were exchanged between the Oversight
21 Board and its advisors, which provide summaries and analyses of
22 the different demand protection terms that were being
23 considered at that time.

24 What was redacted and removed, your Honor, were things
25 that involved analyses and discussions and recommendations to

1 the board and its advisors of how those transition charges
2 should be structured.

3 THE COURT: And what about the other -- the certified
4 fiscal plan; is that what you said?

5 MS. STAFFORD: Yes. There's -- this is really a very
6 small number of communications probably on the order of 10 or
7 15 that involve discussions about the RSA and how it will fit
8 into the overall fiscal plan. It relates to the development of
9 the fiscal plan, which I believe your Honor and Judge Swain
10 have both acknowledged that as between the Oversight Board and
11 its advisors and the Oversight Board and AAFAF, those types of
12 communications should -- are protected by the deliberative
13 process privilege.

14 THE COURT: Let me just ask before Mr. Bassett asks.
15 To the extent that there are notes of the members of the
16 Oversight Board at any of these meetings that you've produced
17 the agendas for, have you produced those?

18 MS. STAFFORD: I don't believe any notes have been
19 produced to date, your Honor, taken by Oversight Board members.

20 THE COURT: And is that -- are you claiming a
21 privilege on those or are -- you just didn't produce notes?

22 MS. STAFFORD: We didn't -- we didn't collect hard
23 copy documents from our board members. So to the extent that
24 they included nonprivileged information, they -- I don't know
25 without looking at them if they include a lot of documents or

1 discussion of things like these demand protection issues that
2 we've just been discussing or if they include anything that
3 might include anything that might relate to attorney advice.
4 So I can can't say for sure whether or not they would be viewed
5 as privileged. We haven't collected them to date.

6 THE COURT: But it would fit into your analysis, I
7 think, since you produced the agendas, and you sort of produced
8 the information about that you have about what went on at these
9 meetings where it was discussed, I think it would be consistent
10 with your production to produce notes.

11 MS. STAFFORD: I -- we are not claiming the
12 deliberative process privilege over the decision to enter into
13 the RSA, so to the extent there are notes that don't discuss
14 any of these deliberative issues that we've discussed or
15 reflect any attorney-client communications, yes, your Honor, it
16 would fit within the analysis I just described.

17 THE COURT: And that for those it seems that that
18 shouldn't be restricted to just the custodians, right?

19 These are personal notes of anybody who was at the
20 meeting?

21 MS. STAFFORD: Sure. I don't know that any such notes
22 were even taken, but...

23 THE COURT: It's always the fun part about making
24 discovery rulings, you don't know whether they exist or not.

25 MS. STAFFORD: Yeah.

1 THE COURT: Okay. Thank you.

2 MS. STAFFORD: Yeah.

3 THE COURT: Does that change your argument at all,
4 Mr. Bassett?

5 MR. BASSETT: Well, I -- I do have a couple of points
6 to make in response, but I would suggest that to the extent it
7 makes sense maybe we should hear from AAFAF and PREPA about
8 their position on these same issues, and I could respond to --
9 to all of them.

10 THE COURT: Okay. Thank you.

11 MS. PAVEL: Ashley Pavel for AAFAF and PREPA.

12 So AAFAF and PREPA are slightly differently situated
13 from the Oversight Board just by virtue of who the key players
14 were and what our role in the process was.

15 AAFAF didn't hire a separate investment banker or
16 business advisor. We relied on Citibank, the same advice they
17 gave from the Oversight Board. And so as a result, AAFAF and
18 PREPA's efforts for their separate work stream were really led
19 by outside counsel, and their internal communications within
20 the elected government parties are discussing the
21 recommendations of counsel and worked on at the recommendation
22 of counsel. Ankura, AAFAF, and PREPA's financial advisor was
23 working to assist counsel in that direction of counsel, and the
24 particular work streams that Ankura worked on are the demand
25 protection term sheet that Ms. Stafford just discussed, and

1 they worked on some underlying projections that went into the
2 fiscal plan, and we did produce from Ankura's files, the doc --
3 the final documents underlying the demand protection and the
4 PREPA fiscal plan documents that we have.

5 My understanding is the Oversight Board is going to
6 produce the documents underlying the most recent PREPA fiscal
7 plan.

8 THE COURT: So have you claimed attorney-client
9 privilege; is that what you're saying?

10 MS. PAVEL: Yes. We're also claiming deliberative
11 process privilege, but it's not the primary privilege. The
12 primary privilege here is the attorney-client privilege and
13 attorney work product. And to the extent anything doesn't fall
14 within that, because of the nature of what Ankura was doing,
15 it's going to fall within the deliberative process privilege.

16 THE COURT: In your affidavits, who did you submit
17 declarations from?

18 MS. PAVEL: Only Mr. Sobrino.

19 THE COURT: And you've -- you've withdrawn that?

20 MS. PAVEL: Yes.

21 THE COURT: Do you anticipate filing anything else
22 that would explain your position vis-à-vis the RSA?

23 MS. PAVEL: We don't know yet, your Honor. We're
24 still deliberating on that.

25 THE COURT: Okay.

1 MS. PAVEL: Okay.

2 THE COURT: The problem, obviously, is to the extent
3 that you take a position that says I've relied on advice from
4 counsel in making the decision to vote for this plan --

5 MS. PAVEL: Uh-huh.

6 THE COURT: -- it's -- it's hard to protect that as an
7 attorney-client privilege communication if you're affirmatively
8 taking the position that you're relying on the advice of
9 counsel, but I don't really know what you're doing at the
10 moment --

11 MS. PAVEL: I know.

12 THE COURT: -- if you've withdrawn that affidavit.
13 That's where I am.

14 All right.

15 MS. PAVEL: All right.

16 THE COURT: Mr. Bassett.

17 MR. BASSETT: So a couple of points, your Honor, and
18 I'll start with the issue of the deliberative process privilege
19 being asserted over the demand protection term sheet. So I
20 think, as we've heard and which is consistent with my
21 understanding and how it has been explained in the various
22 declarations that have been submitted, this is -- this demand
23 protection term sheet is a component of the RSA. And if you
24 look at David Brownstein's declaration, I don't have the
25 paragraph cite handy, but he touts this particular aspect of

1 the RSA as an important provision of the RSA. And to the
2 extent that's true and simply because it is part of the
3 agreement that the court is being asked to approve, we think
4 the arguments we have made concerning whether or not the
5 deliberative process privilege appropriately applies in this
6 situation are equally applicable to that issue. We don't see a
7 principal basis for drawing a line there, and again this is all
8 in our paper and -- in our papers that I won't belabor all the
9 points, but, you know, as your Honor has held in past decisions
10 and in the case law we've cited, the deliberative process
11 privilege does not extend to the situation where the
12 government's decision-making, its intentions, its motivations
13 were those that are at issue in the litigation.

14 And if you look at what the court is being asked to
15 approve here, which is being -- being asked to do here, which
16 is decide whether the entry into the RSA, including the demand
17 protection term sheet, is a reasonable decision by the
18 Oversight Board or the other government parties can't shield
19 communications that go to their decision-making from any aspect
20 of the deal from disclosure.

21 And if you look again, I go back to the declarations,
22 and you have declarant after declarant talking about
23 specifically what objectives they had in mind when they
24 approved the settlement, the fact that those objectives shape
25 the terms and the ultimate agreement consummated in the RSA, I

1 mean, they're relying on what formed the basis for their
2 decision and their effort to have the court approve this
3 transaction.

4 So I don't see how you can then turn around and say
5 but you can't have discovery into that because it's shielded by
6 the deliberative process privilege. Now, I appreciate that at
7 least as far as the Oversight Board is concerned, they have
8 said that they are limiting that only to the demand protection
9 term sheet issue, but it's still not only a part of the
10 agreement, but an integral part of it as they said in their own
11 declaration. So our position is that the deliberative process
12 privilege is not appropriately applied to those documents.

13 I -- I want to take you through my other points. As
14 to AAFAF and PREPA, I guess I'm not -- I'm not entirely sure
15 what the position is. It sounds like they're saying that all
16 of the documents that could potentially be covered by a
17 deliberative process privilege in their view are also covered
18 by the attorney-client privilege or the work-product doctrine.
19 Even if that's the case, we're still entitled to know whether
20 the deliberative process privilege has been appropriately
21 asserted over those documents, because there may be reasons why
22 the other privileges don't apply. But I think what -- this
23 leads into another argument in the agenda that I will just
24 quickly address now.

25 I think part of the reason we're having this

1 difficulty and part of my confusion at least is that the
2 approach AAFAF and PREPA have taken in collecting, searching,
3 and reviewing documents in response to our discovery is to take
4 entire huge categories of communications and simply not review
5 them. So it's not that AAFAF and PREPA have gone and
6 collected, for example, all internal government communications
7 or intragovernment communications, so all their internal
8 communications, not just with counsel, internal among the
9 government officials. It's not that they've taken those
10 documents, searched them for the relevant custodians, reviewed
11 them, and decided on the basis of what the documents say that a
12 particular privilege applies because the elements of that
13 privilege have been satisfied. They have taken the position
14 that they -- they may not even collect them at all. So
15 they -- I could be corrected if I'm wrong, but the position
16 they've told us they're taking is they're simply not reviewing
17 the documents.

18 I don't see how one could possibly say that a document
19 is covered by the attorney-client privilege, the work product
20 privilege, the deliberative process privilege, or any other
21 privilege, if the document is not even reviewed.

22 The same goes for their common interest communications
23 during the relevant date ranges where they're asserting a
24 common interest with the Ad Hoc Group and Assured. They are
25 not even reviewing the documents. They're just saying they're

1 privileged, and because they're still likely to be privileged
2 we're not going to review and collect them.

3 So our position is that we need a whole lot more
4 information from AAFAF and PREPA before we can even realize
5 what they're withholding and before we can adequately assess
6 the propriety of the privileges they're asserting.

7 And one last point as to notes which came up in the
8 discussion with the Oversight Board's counsel, I think the same
9 has to hold true for AAFAF and PREPA to the extent that they're
10 decision-makers, they're board, they're CEO, they're CFO,
11 people who are producing documents took notes regarding
12 decision-making, those have to be subject to production in the
13 same way the Oversight Board's are.

14 THE COURT: So I'm trying to figure out the most
15 efficient way to -- oh, go ahead.

16 MS. STAFFORD: Sorry. I just wanted to point out one
17 thing that Mr. Bassett said that is not correct, which is that
18 demand protection provisions would be part of the amended
19 proposed order. I believe it's -- the demand protections are
20 not included in the amended proposed order, and Judge Swain
21 said in the July 11th hearing that demand protections are one
22 of the items that she's no longer being asked to approve in
23 connection with the RSA.

24 I'd also just want to note that nowhere in what
25 Mr. Bassett just said was there any articulation of how these

1 demand protections bear -- have any bearing on the Jeffrey
2 factors which will form the framework for the court's analysis.

3 THE COURT: So I think this is one where I do believe
4 it is beyond the scope of what's being asked at the 9019. So
5 I'm -- I'm going to sustain the deliberative process privilege
6 for those -- for the demand protection term sheet.

7 If you feel that that needs to result in striking any
8 part of the declarations, you can, but I believe that it -- you
9 have the information that was ultimately included, which
10 is -- which are the facts that you're challenging. I mean
11 you're challenging that this -- the rates are not appropriate
12 or can't be or harms Puerto Rico, or whatever the basis is, I'm
13 not sure, but I think you have the facts that are necessary for
14 that. I'm not sure -- I think that the 9019 is not going to
15 get into the macroeconomics of this, and for present purposes
16 I'm going to sustain the claim of privilege on that.

17 I'm not hearing an objection to the certified fiscal
18 plan claim of privilege.

19 MR. BASSETT: We don't take issue with the assertion
20 of the privilege over those documents, your Honor.

21 THE COURT: Okay. So unless the privilege log looks
22 very different once you've agreed to the scope of the
23 appropriate privilege log, I think that deals with the
24 Oversight Board's claim of privilege.

25 AAFAF is a bigger issue. It's a bigger issue with

1 respect to the search for documents. So maybe we need to hear
2 about that.

3 MS. PAVEL: Thank you, your Honor.

4 AAFAF and PREPA agreed to search and produce the
5 selection of documents that was most likely to be
6 nonprivileged, our communications with the objectors and with
7 the settling bondholders during time periods in which common
8 interests didn't apply. We have collected the common interest
9 period communications, but we have not produced them, and we
10 have objected to doing a document-by-document review of those
11 documents for purposes of creating a log.

12 Obviously, whatever ruling the court has today on the
13 common interest issue will have a bearing on what we do next,
14 but at this point we asserted it would be unduly burdensome for
15 us to endeavor to create yet a fourth privilege log. The other
16 parties have all done categorical logs over that category of
17 communications.

18 With respect to our internal communications, again,
19 those conversations were led by outside counsel, and so we've
20 asserted that those materials are so likely to be
21 attorney-client or work product, and they are so far afield
22 from the objective Jeffrey factors that are before the court
23 right now. What Nancy Mitchell and Maria DiConza may have said
24 to Christian Sobrino or may have said or asked consultants from
25 Ankura to do to support their work is not only overwhelmingly

1 likely to be privileged, but even if it were found not to be,
2 it's just not particularly relevant to the four objective
3 Jeffrey factors of whether the final agreement is actually
4 reasonable in accordance with those factors.

5 THE COURT: You've produced your attorneys as
6 witnesses?

7 MS. PAVEL: Not as witnesses, as two of them are
8 custodians, and we have produced both of their communications
9 with the objectors and with the.

10 Ad Hoc Group and Assured outside the common interest
11 period.

12 THE COURT: So you have not produced their
13 communications with their client?

14 MS. PAVEL: No.

15 THE COURT: And when PREPA voted --

16 MS. PAVEL: Uh-huh.

17 THE COURT: -- have you produced -- it sounds to me
18 like you're not producing the same types of information that
19 the Oversight Board is producing.

20 MS. PAVEL: There was a presentation given to a joint
21 session of the AAFAF and PREPA board, and we logged that on our
22 document-by-document privilege log because we did --

23 THE COURT: So what you're saying is the Board isn't
24 claiming the privilege for it and you are?

25 MS. PAVEL: Yes, because ours contains legal

1 recommendations from outside counsel.

2 THE COURT: At this meeting with both of you?

3 MS. PAVEL: No, no, no. The Oversight Board was not
4 there. It was the board of directors from PREPA and the board
5 from AAFAF that was the joint session.

6 THE COURT: And you've taken the position that the
7 information that was presented to you on which you based your
8 decision to approve the RSA is privileged?

9 MS. PAVEL: Yes, your Honor.

10 THE COURT: Then do you -- so you don't intend to
11 argue that you relied on information from your attorneys or
12 your financial advisors in deciding to approve this? You're
13 just standing silent on whether you think it's a good decision
14 or not?

15 MS. PAVEL: I wouldn't say we're standing silent. I
16 think whether we think it's a good decision is determined by
17 the Jeffrey factors, which look to the realities of the
18 litigation being settled and aren't about internal discussions
19 with attorneys, and so the kind -- the kinds of things we were
20 looking at are the costs of continuing to litigate the receiver
21 motion or continuing to pursue the lien challenge and the
22 appeals that would come from that, and that -- that's the kind
23 of common sense information that doesn't require discovery into
24 attorney-client communications.

25 THE COURT: And is it your position then that the

1 court makes its own assessment without your input on whether or
2 not this was a reasonable resolution?

3 You may be right. I don't know.

4 MS. PAVEL: I think -- the four Jeffrey factors, I
5 said are objective, and the court will look at those objective
6 factors. There is an element of deference to the government
7 decision-making, but that doesn't mean that there's a
8 full-blown inquiry into every step along the way that the
9 government made and whether that was the best call to make.
10 What it means is that if when you apply those four objective
11 factors and were on the bubble and it's a close call on whether
12 it's within the range of reasonableness that the scales get
13 tipped in our favor.

14 THE COURT: Well, everybody's agreeing on the
15 definition of the Jeffrey factor. It just sounds to me like
16 the Oversight Board has taken a different position as to what
17 information is relevant about the merits of the RSA.

18 Am I hearing a difference here or am I making it up?

19 MS. PAVEL: No, I hear you in that they have produced
20 board materials, and we have not. I think some of what is
21 going on is that we shared a business advisor, and so as was
22 brought up in the papers, some communications with investment
23 bankers from Citibank between the government parties have been
24 produced because they were business advice, and I think to the
25 extent there's daylight between us, a lot of the difference is

1 that our communications that were separate from the board were
2 legal discussions with counsel and legal advice or Ankura's
3 work on the demand protection and fiscal plan issues that your
4 Honor has just sustained deliberative process on.

5 THE COURT: All right. So I guess we have to get into
6 the common privilege now.

7 As it now stands, it seems to me that the declaration
8 of Sobrino has been withdrawn. There is no alternative
9 declaration. I have to say that the dec -- the terms of the
10 declaration are important to me, that to the extent that a
11 declaration says that the decision was made based on reliance
12 of presentations or meetings or whatever that that information
13 does need to be produced. But if you're -- if you're standing
14 pat on that.

15 MS. PAVEL: Well, we are withdrawing the Sobrino
16 declaration. I would point out, however, the bulk of
17 Mr. Sobrino's declaration which is in the court record is not
18 about talking about, like, Nancy and Maria had advised him, and
19 that's why he agreed. The declaration spends a lot of time
20 talking about the publicly available information about the
21 realities of the receivership litigation and how long it had
22 drawn out, and the litigation risks of the lien challenge,
23 there was a paragraph or two at the end, I'm just saying.

24 THE COURT: He already gave him that information, and
25 he was going to be deposed about it --

1 MS. PAVEL: Yes.

2 THE COURT: -- but he --

3 MS. PAVEL: Right.

4 THE COURT: So he -- I assume that the original plan
5 was for him to stand up and say, you know, my information was
6 that it was going to take another four years, and this was what
7 PREPA's plans were, and this was inconsistent with it, but
8 right now you don't have anybody --

9 MS. PAVEL: That's correct, your Honor.

10 THE COURT: -- to say that your vote was based on that
11 the litigation would take four years?

12 MS. PAVEL: Yes.

13 THE COURT: Are there any depositions of PREPA that
14 are scheduled?

15 MS. PAVEL: There is a 30(b)(6) deposition of PREPA,
16 and we currently have a deposition of Fernando Battle, who is
17 an advisor for Ankura, who will be speaking to some of the
18 topics. We're still working out some other topics that have
19 been noticed for PREPA and AAFAF now that Mr. Sobrino is no
20 longer an AAFAF employee.

21 THE COURT: Okay. Thank you.

22 MS. PAVEL: Thank you.

23 MR. BASSETT: Your Honor, just a couple of quick
24 points. As to the Sobrino declaration having been withdrawn,
25 while that's true, we just learned about that today. It

1 doesn't mean that the statements that they made in that
2 declaration are all of a sudden no longer relevant topics for
3 discovery. I mean what they said in their declaration
4 concerning the events that transpired leading up to this
5 element, the decision-making processes that AAFAF and PREPA
6 followed in entering into the settlement, I mean, that was a
7 sworn declaration under oath. So all the topics and statements
8 made in that declaration are still topics and statements that
9 we can explore.

10 And, you know, this idea that internal communications
11 are completely irrelevant to the Jeffrey factors analysis
12 because it's only an objective analysis, again that's
13 completely belied by all of the declarations not just
14 Mr. Sobrino's that we've received. That's not the basis upon
15 which they're asking the court to approve the transaction.

16 As I mentioned in my opening remarks in June, on
17 June 7th, at that time they had a different argument. They
18 said the only thing the court should consider is the amount of
19 the settlement and whether it's discounted enough to be
20 reasonable. They have since expanded their argument into a
21 whole new host of territories.

22 And we think internal communications from people
23 at -- government officials at AAFAF and their advisors could
24 absolutely be relevant to that, if not the most relevant
25 documents in this entire dispute. I mean, whether there was a

1 quid pro quo involved in some aspect of the transaction,
2 whether or not people who were actually tasked with approving
3 the transaction believed that it was a deal that makes sense in
4 light of the litigation risks and other considerations whether
5 or not the deal, in fact, has a positive effect on the proposed
6 transformation, all of these things that they're offering is
7 their rationale for the settlement, it's what the
8 decision-makers themselves thought. Do they actually support
9 those statements or do they not? Do they completely undermine
10 them? That's, in our view, all subject to discovery.

11 And another point, I think your Honor was right to
12 point out that AAFAF and PREPA should be held to the same
13 standard as the Oversight Board in terms of producing documents
14 and notes and things like that. And I just -- I want to make
15 sure that what I was discussing in my remarks a few minutes ago
16 is not lost on the court, but they haven't reviewed any
17 internal communications. So they may think that they're of
18 marginal relevance. They may say that their counsel largely
19 led discussions, but they haven't undertaken -- nobody else in
20 this case has taken that position.

21 The Oversight Board, the Ad Hoc Group, Assured,
22 they've all satisfied their discovery obligations by
23 identifying documents that might be responsive, reviewing those
24 documents, and making privilege calls. AAFAF has just
25 categorically decided we're not going to review any of it. If

1 it's internal, if there's a document that's between two
2 board -- two board members, if there's a document between two
3 officials at AAFAF talking about their decision to approve this
4 transaction, or even a communication between somebody at AAFAF
5 and somebody at PREPA, they have no idea whether it's relevant.
6 They also have no idea whether it's privileged because they
7 didn't review it.

8 And what we're asking for in our motion is an order
9 compelling them to comply with their discovery obligations and
10 at a minimum search for, review, and log -- we're happy to talk
11 about a categorical log -- to the extent necessary these
12 documents and produce what's not privileged. That, I don't
13 think we've, you know, have -- I don't think that issue has
14 been resolved, but to be clear that's what we're asking for in
15 our motion.

16 THE COURT: I do want to understand more fully whether
17 or not that review has taken place.

18 MS. PAVEL: So for the common interest communications,
19 we have them, and we have done a first-cut review; and if we
20 are ordered to produce those communications, we could roll them
21 out the door very quickly.

22 What we have not done is a document-by-document
23 categorical log. We have collected the email files for all of
24 our custodians so that we are in possession of any
25 communications between the custodians. We have not endeavored

1 to do a document-by-document review of those communications
2 because we believe they are marginally at best relevant and
3 overwhelmingly likely to be privileged, and it's not in the
4 interest of efficient litigation for us to undertake a
5 document-by-document review of those documents for purposes of
6 logging them or producing what potential handful of marginally
7 relevant information would be there.

8 THE COURT: And that's the scope of documents that
9 you're talking about?

10 MS. PAVEL: For the common interest communications, I
11 believe across both the Ad Hoc Group and Assured it's around
12 3,000. I don't have a document number as I sit here for the
13 internal communications.

14 THE COURT: It's not appropriate to make the
15 assumption that the documents are not going to be producible.
16 All right. So you do need to undertake that review.

17 MS. PAVEL: Okay.

18 THE COURT: I also in looking at Mr. Sobrino's
19 declaration, he does talk about this August 17th -- I'm sorry.
20 April 17, 2019, presentation, which was made to the joint
21 session of AAFAF's Board of Directors and PREPA's governing
22 board explaining the key provisions and other analysis. I mean
23 that's in his declaration. It seems to me that that position
24 says that the deliberative process can't cover that meeting.
25 You -- you've either waived it or it's not applicable, but you

1 put in the record about this joint presentation, which was the
2 basis for the vote.

3 MS. PAVEL: Uh-huh.

4 THE COURT: You can't hide behind the privilege for
5 that. So you do need to produce the documents -- I
6 don't -- I -- I don't have a full sense of what's out there,
7 but I do think that the board's characterization of what was
8 produceable should apply to PREPA as well.

9 MS. PAVEL: Yes, your Honor.

10 THE COURT: So it should be the Board -- now, if you
11 want to claim a privilege on specific information, I'm not
12 telling you you can't do that, but as a general statement, you
13 need to produce the documents reflecting what went on at these
14 meetings, the information that was provided, and that the
15 information that was relied on by PREPA in approving this RSA.

16 MS. PAVEL: Yes, your Honor.

17 THE COURT: Okay?

18 MS. PAVEL: Okay.

19 THE COURT: And then you can work on the scope of the
20 log, and if there's a problem we'll deal with that at another
21 time.

22 MS. PAVEL: Yes, your Honor.

23 MR. BASSETT: Thank you, your Honor.

24 I think that's -- I think that's it for
25 deliberative -- the deliberative process privilege for now. So

1 I will move on to the common interest privilege.

2 So like many of the other positions the government
3 parties have taken in discovery, they take an incredibly
4 aggressive stance as to their application of the common
5 interest privilege to communications that they had with the
6 supporting bondholders to the deal.

7 As to the Ad Hoc Group, with which the government
8 parties initially entered into a preliminary RSA in July of
9 2018, July 30, 2018, which was later superseded by the
10 definitive RSA, which is the one that's actually being asked to
11 be approved by the court in May of 2019, the government parties
12 take the position and the Ad Hoc Group likewise take the
13 position that the common interest privilege attaches on
14 July 30th when the preliminary RSA was signed and covers all
15 communications that they had with one another concerning the
16 RSA in any way, shape, or form, until May 3rd -- well, through
17 May 3, 2019. After that it continues to apply.

18 So they're going back to July 30, 2018, and basically
19 their argument is that they had a deal on all material terms of
20 the RSA when they signed a preliminary RSA. And then because
21 of that all the negotiations that took place for the next nine
22 months are all shielded by the common interest doctrine.

23 And just based on the sheer length of time alone, I've
24 never seen a common interest privilege extended that long in
25 negotiations. It's hard to believe. It's also hard to believe

1 because they say that they began negotiating the preliminary
2 RSA in, I believe, May of 2019 and reached -- what they say --
3 May 2018, I'm sorry. And say that they reached an agreement on
4 all material terms by July. But yet it took them another nine
5 months or more until May 3, 2019, to actually enter into the
6 final agreement.

7 And if you look at the documents that we've found in
8 discovery thus far, which we cited to in our papers, they
9 demonstrate clearly that there was no commonality and interest
10 to the extent required for the privilege to attach between the
11 Ad Hoc Group and the government parties during that time
12 period. I mean, we cite documents from the October to
13 November 2018 time period. This is attached as Exhibit 5 to
14 our initial motion to compel where the Oversight Board and the
15 Ad Hoc Group were talking about changing the structure of the
16 bonds and other -- other terms that would amount to material
17 changes to the original deal.

18 In December 2018, they -- there is discussion about
19 major additional terms being added to the agreement that were
20 unacceptable to clients and a discussion about how the parties
21 at that point were, quote, very far apart.

22 In January --

23 THE COURT: How did you get that information? So
24 where is -- where are those -- where's that document production
25 from?

1 MR. BASSETT: So --

2 (Counsel conferred.)

3 MR. BASSETT: These -- these were documents, your
4 Honor, that are discussed in the materials. These are
5 documents that were given to the committee before this
6 litigation occurred.

7 THE COURT: So this has to do with the receivership
8 motion?

9 MR. BASSETT: No, your Honor. These were documents
10 that were voluntarily provided to the committee by counsel for
11 the Oversight Board during the negotiations, before
12 this -- before this settlement was ever --

13 THE COURT: This is the one whether that's a waiver
14 of -- okay.

15 MR. BASSETT: That's right.

16 And I also just want to be clear that the -- you know,
17 these comparison charts that the government parties have
18 attached that show the terms of the preliminary RSA versus the
19 definitive RSA, they're designed to show that a lot of
20 provision -- that a lot of the terms have stayed the same and
21 that somehow that's evidence of a continued common interest
22 during the entire time period. There's a couple of responses
23 to that.

24 One, the cherry-picking provisions for the purposes of
25 making a chart look like there are a lot that are consistent,

1 but the chart itself, if you look at the last four or five
2 rows, has a host of key provisions that many of the declarants
3 rely on and tout as critical components of the deal that were
4 totally unsettled and hadn't even come into being at the time
5 of the preliminary RSA.

6 You had the demand protection issue that we've talked
7 about, remedies that a defaulting party would have under the
8 agreement, securitization protections which are the terms under
9 which the new bonds will be issued. And then a whole category
10 of how the settlement would be implemented, including the
11 millions of dollars in settlement payments, the hundreds of
12 millions of dollars in adequate protection payments, settlement
13 payments, et cetera, that are being made to the bondholders.
14 These are all provisions that they admit had not been fully
15 agreed upon at the time of the preliminary RSA, yet, they're
16 saying that they have a common interest at every point
17 thereafter.

18 And I think just to address the case law very quickly.
19 I think there may be a -- a bit of confusion on that. We think
20 the standard in the First Circuit is that there must be an
21 identical or nearly identical interest. They've cited to your
22 Honor's decision in the ERS case as being to the contrary, and
23 that decision cites the mortgage and realty trust case from
24 California, and the -- the language that they quote is that the
25 privilege applies where the interests of the parties are not

1 identical and even where the parties and interests -- where the
2 parties' interests are adverse in substantial respects. That
3 doesn't mean remotely what they say it means. If you look at
4 the very next paragraph in the mortgage realty and trust case,
5 what the court was talking about, that was a case involving a
6 common interest between a creditors committee and a debtor in a
7 Chapter 11 case as to litigation against a third party. And
8 the point the court was making is that, of course, a committee
9 and a debtor have widely divergent interests in a number of
10 areas in a case. We have divergent interests with the
11 Oversight Board in this case. We are on the same side as them
12 and others, and we have asserted common interest in this case
13 as to this other issues. That's not surprising.

14 What the court was not saying is that parties can
15 diverge as to the issue in question and then have the common
16 interest apply to communications related to that issue. As to
17 the issue over which the common interest privilege is being
18 claimed, the parties have to have substantially identical
19 interests, and they cite the *Tribune* case, but the *Tribune* case
20 also doesn't support their point.

21 In that case, the court cited to the mortgage realty
22 and trust for the same quote that they've relied on, and in the
23 very next sentence in that case, the *Tribune* case, the *Tribune*
24 court said, When the interests of the parties diverge to some
25 extent, the common interest doctrine applies, quote, "only

1 insofar as their interests are, in fact, identical," end quote.

2 And the communications as to matters which they hold
3 opposing interest lose any privilege. Now, in that case the
4 *Tribune* court did say, and in the context of negotiations, two
5 parties who are negotiating a transaction can have a common
6 interest even if some terms are being ironed out, but the court
7 only applied that once all material terms had been ironed out.
8 And here that's not our facts.

9 THE COURT: So what is your -- which of the areas of
10 this that you contend remained adverse that are material?
11 Anything that is on this list that's not yet decided?

12 MR. BASSETT: Well, I -- it's not just limited to
13 that, your Honor. What the court needs to keep in mind is that
14 the preliminary RSA was not binding. And I think that's key
15 because what it was essentially an agreement to agree or an
16 agreement to negotiate.

17 THE COURT: You still have to flush it out into an
18 agreement, and presumably you can decide that you don't get to
19 that agreement, but your goal at that point is working towards
20 the same -- you have the same interests more than just wanting
21 to settle. You've defined the principal terms of that, and
22 you're working together to figure out the best way to express
23 that agreement.

24 MR. BASSETT: That may be so as to certain provisions
25 that the parties have said that they are preliminary --

1 preliminarily agreeing upon, but I -- I don't think that allows
2 them to then shield everything from disclosure, because we have
3 documents showing, for example, you know, they do the
4 comparison that says that the amount of the bonds are the same
5 as to the exchange rates, right? So the -- the old -- the
6 outstanding bonds are being exchanged for new bonds at certain
7 exchange rates, and they put in their chart that those were the
8 same, and the preliminary are the same, the final are the same.
9 But we now have communications, and I think these are ones that
10 actually somehow were produced in discovery, although I can be
11 corrected wrong by a colleague, that show that the exchange
12 rates were actually in flux through January 2019. There was a
13 back and forth about whether or not that should be changed. In
14 fact, at one point it was changed.

15 So I don't -- it would create a very perverse
16 incentive, and this is something that the debtor would do every
17 time it wants to negotiate with a party in this case to say,
18 you know what, just in case we end up successfully agreeing to
19 a deal and we want to put to -- put forth a motion to the court
20 that might be challenged, before we start negotiations let's
21 throw out a nonbinding aspirational term sheet, and if it just
22 so happens that when we actually get to a deal after we've
23 actually negotiated and the terms are similar to those in the
24 original term we put together, then all that shielded it from
25 disclosure, because you can just do a comparison, and things

1 didn't change. But that's -- it shouldn't be that way. And
2 that's not what happened because the fact is they had
3 aspirational provisions, and then they negotiated from there
4 and at times were completely at odds with one another. And as
5 they said in their email correspondence, very far apart.

6 So based on the record that we have, it seems to us
7 that there's not nearly enough for the government parties to
8 satisfy their burden of demonstrating that the common interest
9 privilege should apply here during that entire time period.

10 THE COURT: Is there a way to say that there was
11 agreement on components of this and not on others? I mean...

12 MR. BASSETT: I'm willing to have that discussion with
13 the government parties, your Honor, but I think the response
14 you'll get from them is that, particularly from AAFAF, I'm
15 assuming is that they aren't able to undertake that level of
16 review, but I'm happy to have that discussion to the extent
17 that they think that there are categories of communications or
18 particular emails that they can identify as relating to items
19 that were still being negotiated as to ones that they contended
20 that they weren't. I'm happy to have that discussion. I don't
21 think that's the right way to go because again this is a
22 nonbinding agreement. I don't think they had agreed on any
23 terms in July of 2018. So nothing should be privileged.

24 THE COURT: Okay.

25 MS. DALE: It's Margaret Dale for the Oversight Board.

1 Your Honor, the Exhibit A to our opposition to the
2 renewed motion to compel, or Appendix A, my apologies, reflects
3 the issues upon which in the preliminary RSA and in the
4 definitive RSA the parties had agreement or where there was
5 differences. And we think that chart is really important for
6 the court to consider because essentially the material terms of
7 the agreement were decided upon entering into the preliminary
8 RSA as of January -- July 30, 2018. That was with the ad hocs.

9 THE COURT: As of the time -- at the time of the
10 preliminary RSA, were the terms that were not changed open to
11 be being changed?

12 Could -- could a party have said, okay, we're okay on
13 the exchange of PREPA revenue bonds into traunch A and
14 traunch B, but now we don't want to do that any more. I think
15 that's what their position is. Is it the fact that it didn't
16 change doesn't mean that you weren't still negotiating all of
17 the critical changes?

18 MS. DALE: But, your Honor, that's not --
19 respectfully, I mean, that's just not relevant. I mean, they
20 didn't change, and the economic terms of the two bonds were set
21 in the preliminary, and they didn't change; and what the cases
22 talk about is minimally identical or nearly identical legal
23 interest in the issue presently before the court, and here I
24 would say the issue presently before the court is whether the
25 terms of the RSA that we're asking for approval, whether we --

1 whether we and the ad hocs as of July 30, 2018, had a common
2 interest, a common legal interest, in getting those terms
3 approved and getting the restructuring of these bonds done.

4 THE COURT: Well, that's what I'm asking you. Was
5 there an agreement at that point to have a common interest to
6 have these terms approved --

7 MS. DALE: That's -- I believe there --

8 THE COURT: -- per the ones that say we still need to
9 talk?

10 MS. DALE: Right. There were the TBDs of the -- I'm
11 sorry, to be discussed in the demand protection section, for
12 example. But, yes, the -- the economics of the deal were set
13 on -- as of the time the preliminary RSA was negotiated --
14 signed, July 30, 2018.

15 You know, whether there were back and forth and
16 whether people were saying, well, we should do -- you know,
17 maybe there can be more on A and less on B, I believe that did
18 occur, but they did -- overall those -- those -- those terms
19 did not change. They were the major economic terms, and they
20 didn't change.

21 So with respect to the issue that the court is looking
22 at and deciding right now, there was a common legal interest
23 nearly identical. The court says there can be some adversity,
24 but I think with respect to getting approval of the relevant
25 terms of the deal and restructuring the bond debt everyone was

1 on the same boat and rowing in the same direction, had the same
2 potential adversaries at that time, right. The UCC wasn't in
3 the deal. The Fuel Line Lenders weren't in the deal.

4 I mean, we're only claiming the common interest
5 privilege with the Ad Hoc Group starting at the time that the
6 preliminary RSA was signed. We have produced our
7 communications with Assured up until the time that we've signed
8 the term sheet on the definitive RSA with Assured and -- I'm
9 sorry.

10 THE COURT: Was that because Assured was not signing
11 on to all of the terms?

12 MS. DALE: Correct. Yes. That was the difference.
13 And so we had to deal with the Ad Hoc Group earlier, and then
14 we were negotiating the things that were still TBD, and I
15 believe that Assured was continuing to negotiate as well, but
16 we weren't claiming a common interest with Assured at that
17 point. And we've produced those communications.

18 And with respect to the waiver point, your Honor,
19 because I didn't want to take a lot of time on this, but the --

20 THE COURT: As I understand it, you provided
21 those -- those documents to them to keep them apprised of what
22 was going on at their request, because there was a potential of
23 them joining or -- or wanting to know what was happening?

24 MS. DALE: They wanted to be kept apprised of the
25 negotiations. They asked us, you know, at various points in

1 time. They have a special statutory role here. We gave those
2 documents, I think there were 14 in total, as a -- to them as a
3 professional-eyes-only designation. We have not claimed
4 privilege here with respect to those documents. We've produced
5 them. And according to the -- you know, the case, XYZ case,
6 for example, we have not sought to gain an adversarial
7 advantage in judicial proceedings with respect to any of them.
8 So we don't think we have worked an implied waiver or an
9 implied waiver has occurred here.

10 THE COURT: I'm also hearing them argue that you
11 waived. Did I miss an argument? I could have, but I don't
12 find a waiver.

13 MS. DALE: Thank you.

14 MR. BASSETT: We have asserted that argument in our
15 papers, your Honor.

16 THE COURT: Well, you lost.

17 MR. BASSETT: Fair enough.

18 THE COURT: There you go.

19 MR. BASSETT: Was that it for Ms. Dale?

20 THE COURT: I don't believe that there was a waiver --

21 MR. BASSETT: Okay.

22 THE COURT: -- in connection with the way it
23 was -- the way the information was requested and turned over on
24 a limited basis and not part of the litigation. I think there
25 was no waiver under the law. Okay.

1 Does anybody else need to be heard on waiver?

2 MR. HAMERMAN: Not on waiver.

3 THE COURT: Okay.

4 MR. BASSETT: So the issue I wanted to address on
5 common interest was with respect to the government parties and
6 Assured. We've been talking about the government parties and
7 the Ad Hoc Group to this point.

8 So the -- the issue's a bit different there, so,
9 Assured and the -- well, Assured is claiming two different
10 common interest privileges at two different time periods.

11 One of those is a common interest privilege between
12 Assured and the government parties and the Ad Hoc Group
13 beginning on March 26, 2019, which was the date of a term sheet
14 that preceded the definitive RSA. And this kind of goes to
15 your Honor's point when you liken the preliminary RSA to a term
16 sheet -- it's the actual term sheet related to the definitive
17 RSA. It was in March of 2019.

18 THE COURT: So March was the first one that included
19 Assured?

20 MR. BASSETT: That was the first that included
21 Assured. Then the definitive RSA was executed --

22 THE COURT: In May.

23 MR. BASSETT: -- in May. And on that issue it's our
24 position that based on the record that has been presented to
25 us, Assured and the government parties haven't carried their

1 burden of even demonstrating that the transaction didn't change
2 materially from March 26th through May 3rd. In fact, I mean
3 just from our review of the term sheet, at a minimum there's a
4 fiduciary out provision related to the agreement that was not
5 part of the term sheet that remained to be negotiated that
6 would allow, you know, backing out of the agreement in the
7 appropriate circumstance, and that is something that we think
8 is a material provision of the agreement.

9 So, again, it's not our burden to demonstrate that the
10 privilege is applicable during this time period. We don't
11 think the government parties or Assured has satisfied it.

12 The other privilege that Assured is asserting is a
13 common interest privilege with the Ad Hoc Group. So the Ad Hoc
14 Group is also asserting this privilege as well on its behalf.
15 Beginning in October 2018, even though in October 2018, Assured
16 didn't have its common interest with the government parties.
17 So Assured is saying it had a common interest with the
18 government parties as to the RSA beginning in March, but
19 somehow it had a common interest with the Ad Hoc Group relating
20 to the same RSA beginning in October.

21 When I first read that I was confused as to how that
22 could possibly be, and the way the Ad Hoc Group describes it in
23 their papers is that they understood, the Ad Hoc Group
24 understood, that Assured had accepted the economic terms of the
25 settlement in October 2018. That is simply not possible to

1 believe.

2 In October 2018 and well beyond that for several
3 months, Assured was vigorously litigating the receivership
4 motion, which is being settled as part of this deal against the
5 government parties and clearly had not agreed to the terms of
6 the settlement.

7 So the idea that Assured and the Ad Hoc Group somehow
8 had their own common interests because Assured had accepted the
9 terms of the settlement in October of 2018 is not supportable
10 on the -- on the undisputed record.

11 That's all I have on those arguments, your Honor.

12 THE COURT: From Assured?

13 I don't think they should have given me a courtroom
14 without a clock.

15 MR. HAMERMAN: Judge, Natan Hamerman from the Ad Hoc
16 Group, not from Assured, one more time, this time to talk about
17 the various common interest issues.

18 We join in the arguments that the government parties
19 made. We have a few points, and I'll try to answer some of the
20 questions that Mr. Bassett has posed.

21 First of all, for the reasons I mentioned earlier,
22 because the committee has never contended that the issue of
23 negotiations is truly relevant to any of the topics at the
24 9019, in many respects this is all a side show. It's all
25 relating to irrelevant communications that don't go to any of

1 the core issues at the 9019 hearing. These particular
2 communications don't really matter, and so the court can easily
3 deny the motion on that reason alone, but that kind of folds in
4 later in the argument as well, which I'll get to in a second.

5 With respect to demand protections -- well, you know,
6 even before we get there, the committee contends that the
7 common interest claim is incredibly aggressive. It's not
8 incredibly aggressive at all. If you look at -- if you look at
9 that chart, the entire structure of the deal was agreed to back
10 in July 2018. The entire concept that we'll have -- we have
11 these old bonds, what are we going to do with them? We're
12 going to exchange them for new bonds. That -- that didn't have
13 to be that way. It could have been you keep your old bonds.
14 They're coming through, you know, in the reorganized debtor.
15 It could be you don't get any bonds, you get a payment, you
16 become partial owners. There's a thousand different structures
17 that could have been agreed upon between a creditor like the Ad
18 Hoc Group, like bondholders like the Ad Hoc Group, and the
19 debtors.

20 This overall structure was agreed upon, not just the
21 overall structure, but the exchange rate was agreed upon, and a
22 whole host of other provisions that are enumerated there. They
23 make it sound like we cherry-picked. These are the biggest
24 provisions of the deal. They go to the absolute heart of the
25 economics between the parties, and they are virtually

1 unchanged.

2 Now, your Honor was clearly asking a question about
3 well does that -- is that just lucky? Is it just lucky that
4 they kind of stayed the same? That's what Mr. Bassett is
5 implying, that this was just lucky that they stayed this way.
6 No, that's not the case. Those terms were the agreed upon
7 terms. If something happened that required a change to those
8 terms, then the parties cooperating together had a discussion
9 about changing those terms.

10 So, for example, one of the documents that they
11 mention in their renewed motion to compel are a series of
12 communications about, well, what happens if these -- if these
13 new securitization bonds become taxable; whereas, before we
14 contemplated and we agreed that we would try to make them
15 nontaxable. So now the parties are stuck with a situation
16 where they're concerned, it didn't ultimately pan out this way,
17 but they're concerned. What happens if these are taxable, and
18 they said, well, if they're taxable, in order for the economics
19 to remain the way they were back in July 2018, because we're
20 living by that deal, in order for the economics to remain that
21 way, we need to push on this lever or pull on this lever or
22 modify things slightly in order to make that happen.

23 So rather than showing that the terms were just fluid,
24 and it's lucky that we ended up this place, what the documents
25 that the committee has put in actually show is that the parties

1 were extremely committed to the July 2018 deal and that they
2 recognized -- I'm sorry. I need to slow down?

3 THE COURT: Apparently New York lost us, so we need a
4 minute.

5 MR. HAMERMAN: I'll pause.

6 (Pause.)

7 THE COURT: I hate to do this midstream, but why don't
8 we take five minutes.

9 MR. HAMERMAN: Okay. No problem, Judge.

10 THE CLERK: All rise.

11 (Recess from 4:01 p.m. to 4:07 p.m.)

12 THE CLERK: All rise.

13 Please be seated.

14 THE COURT: We were going to keep going. So New York
15 is still awake. All right.

16 MR. HAMERMAN: Just for -- for clarity of the record,
17 Judge, I was talking about Exhibit 15, which talks to the
18 renewed -- to the committee's renewed motion, which talks about
19 some of these tax concepts.

20 What you'll also see in the chart, which is attached
21 to the government's papers and our papers on the original
22 opposition to the -- to the original motion to compel, another
23 reason that terms changed is because Assured joined the deal,
24 and they negotiated for certain different terms. So the -- the
25 government parties and the Ad Hoc Group had fidelity to their

1 original deal, except for if something came in and changed and
2 caused the change and caused a reevaluation.

3 You know, Mr. Bassett talks about, well, the original
4 deal was not binding. I'm not sure why that matters. He has
5 not cited a single decision that says that that matters. I
6 don't know why it should matter. What should matter is
7 not what's -- and what, frankly, weighs in the other direction
8 is not withstanding that an agreement is not binding, nobody
9 left the agreement. They had a common interest that they
10 worked towards, and nobody left. There's no decision that I'm
11 aware of that says you have to have a binding agreement in
12 order for a common interest to apply.

13 He talks about the sheer length of time, nine months.
14 Imagine for a moment, Judge, one of the -- one of the most
15 common places that common interest agreements come up is in the
16 joint defense context with criminal defendants. Those
17 litigations can go on for years. There's no rule that says
18 nine months is too long for a common interest agreement to
19 apply. He hasn't cited a decision that says that.

20 So, you know, I really don't think there is anything
21 incredibly aggressive to -- quite to the contrary, I think
22 what's going on with the common interest claims here makes
23 complete sense.

24 THE COURT: All right. So the question that I have is
25 the common interest alleged between Assured and the Ad Hoc

1 Group. But what? I mean, the common interest is getting this
2 plan approved by the court. So it seems to me that Assured,
3 who is still not signed onto that until March, the fact that
4 it's getting along with the Ad Hoc Group, I don't see
5 constitutes a common interest.

6 MR. HAMERMAN: Okay. So --

7 THE COURT: If there is a common interest there and
8 not with the -- not with the government parties then I'm not
9 sure then how Assured can have a common interest with the
10 government parties.

11 MR. HAMERMAN: Sure.

12 THE COURT: I mean the Ad Hoc Group. It either breaks
13 it or it doesn't.

14 MR. HAMERMAN: Let -- let me try to break it down a
15 little bit. The common interest that we claim arose in
16 October -- in late October or mid-October of 2018 was based on
17 Assured agreeing with the Ad Hoc Group on the economic terms by
18 which it would be folded in to the RSA.

19 THE COURT: But it didn't agree with the government
20 parties?

21 MR. HAMERMAN: That's correct. That agreement didn't
22 happen until March in part because, as Mr. Bassett correctly
23 points out, the receivership motion that was brought by the
24 mono line insurers was going on at that time, but we had agreed
25 with Assured that we had wanted them to be folded into the RSA

1 under these particular terms that we had agreed -- that we had
2 agreed to with them.

3 So there was an agreement with -- between the Ad Hoc
4 Group and Assured that said, let's get you in on this. It
5 would be -- it would be very good if more parties were part of
6 this RSA. We have agreed upon how you should be part of RSA.
7 Let's take this back to the government. Ultimately, it does go
8 back to the government and those tripart -- those tripartite
9 negotiation communications we've produced. We haven't claimed
10 common interest over those.

11 So between October 18, 2018, and March of 2019, when
12 Assured, the government, and the Ad Hoc Group are commonly
13 discussing folding Assured into the deal, those
14 negotiation-related communications have been produced because
15 we recognize that while -- while we had a deal with the
16 government, Assured did not, and while we wanted Assured to
17 be -- to be part of the deal, the government had not yet agreed
18 to that. So those communications were, in fact, produced.

19 Come March of 2019, Assured, the government, and the
20 Ad Hoc Group had all agreed on common terms, and so now at that
21 point in time, all parties have claimed what I'll call a
22 tripartite common interest. So there is a logical basis that
23 dovetails exactly with the fact of how the negotiations and
24 deals went. We didn't just pick it, and it's not just lucky.
25 It's we -- we worked at this. We came up with the principled

1 reason, and that aligns with the parties' expectations.

2 THE COURT: If -- if you had reached a common interest
3 with that -- with Assured in October 18th, did you then have a
4 united front with the government parties? It's that interim
5 that I'm having a really -- a problem with.

6 MR. HAMERMAN: Sure.

7 THE COURT: Not that, yes, we would like as many
8 people as possible to sign on, you know, we're happy that
9 you're signing on, but I don't see where there's a common
10 interest to a goal until you have reached -- because the plan
11 has to involve the government parties.

12 MR. HAMERMAN: So the plan between the Ad Hoc Group
13 and the government parties did not end or terminate or,
14 frankly, even change in very many material ways once the Ad Hoc
15 Group and Assured agreed that Assured should be folded in. So
16 that -- the deal didn't go away. We were still aligned with
17 the government, the Ad Hoc Group was still aligned with the
18 government, and still had a deal with the government. That was
19 not changed.

20 So insofar as there are communications between the
21 government and the Ad Hoc Group alone about the government-Ad
22 Hoc Group deal, we are continuing to claim common interest over
23 that. Insofar as there were negotiations to fold Assured into
24 this deal and make it a tripartite deal, we did not claim
25 common interest over those.

1 So that's the, I think --

2 THE COURT: You are claiming a common interest though
3 with the -- with Assured?

4 MR. HAMERMAN: Yes, over communications relating to
5 folding them in. Only between -- only between the Ad Hoc Group
6 and Assured in that period of time, yes, Judge.

7 THE COURT: Right. But what were the major terms
8 there because Assured still -- Assured's major terms are still
9 being negotiated with the government parties. So I'm not
10 sure -- I mean, you didn't commit yourself to pushing Assured's
11 position with the government parties or did you?

12 MR. HAMERMAN: I -- I don't know the answer to that as
13 I'm standing here. My understanding is that Assured --

14 THE COURT: Is there a term sheet? Is there anything
15 other than that email that says we have a handshake or...

16 Was that you?

17 MR. HAMERMAN: No, that was -- that was a later
18 communication. I don't know the answer to your Honor's
19 question. I'm happy to try to find an answer to it.

20 THE COURT: That's all right. It's getting a little
21 late. Why don't -- let me just hear from Assured.

22 MR. HAMERMAN: Can -- can I touch on just two other
23 points, Judge, just quickly? Sorry.

24 The -- the committee talked about -- you know, Judge,
25 I'm going to let it go.

1 Thank you.

2 MR. NATHBONY: Thank you, your Honor.

3 William Nathbony from Cadwalader on behalf of Assured.

4 First, with respect to the March 26th date, I know
5 your Honor mentioned it, but it wasn't mentioned before, that
6 is we have come forward with evidence of the agreement and the
7 handshake deal in the Ellenberg email that is attached to our
8 papers to support the common interest, the tripart common
9 interest that starts March 26, 2019, as opposed to the date of
10 the signing of the RSA.

11 At that point, all three were moving together towards
12 implementation and finalization of the -- the final RSA, and
13 those communications would be covered by common interests.

14 As far as your Honor's questions relating to
15 October 18th, well, it was at that point that Assured basically
16 joined the negotiation, and we spent a fair amount of time
17 talking to the custodians looking at documents, and that's how
18 we came up with the October 18th date, because that was the
19 first time that basically Assured joined the negotiation.

20 And what is the common interest now between the
21 ad hocs and Assured, which is your Honor's question. And I
22 think the answer is that they're both creditors. They're both
23 creditors looking to finalize a deal moving forward. Now, it
24 may be that the ad hocs have their own communications with the
25 government as well, but from our perspective, you know, just as

1 the ad hocs did, we did not withhold documents from October 18,
2 2018, to March 26 -- March 25 -- excuse me -- 2019, with the
3 government because we didn't believe that the common interest
4 of the government started until March 26 of 2019.

5 But as of October 18, we with the ad hocs were part of
6 a deal to move forward to implement as creditors a deal
7 relating to this. And the basic economic terms -- I mean, the
8 ad hocs and the government could have said, sorry, Assured, you
9 know, you're not coming aboard, but the bottom line is we had
10 agreement under which terms that we could come aboard, and that
11 is that the negotiation of those -- the language to get that
12 done in the final terms was creditors working together with the
13 government to get something done.

14 And, admittedly, the government is the adverse side of
15 that, but the ad hocs and Assured were not the adverse side,
16 nor were we adverse parties at that point because they had
17 their separate deal, and we were moving forward to join the
18 club. That's what I have for you, your Honor.

19 THE COURT: This is where I am right now. I don't
20 think that we need to have a binding agreement or a finalized
21 deal to have a common interest; and I do believe whether under
22 First Circuit law and the other cases that are cited, there
23 just has to be a substantial identity of interest, but there
24 can't -- and it's on the points that are at issue. The parties
25 can be an adverse in other situations.

1 I do though believe the record is sufficient to
2 establish the two outside the July 30, 2018, between the
3 government parties and the Ad Hoc Group, and the March 26,
4 2019, for the government parties, Ad Hoc Group, and Assured.

5 I am not accepting that October 18th date.
6 It -- if -- if Assured still has critical issues that it's
7 negotiating to be part of the process to go forward then the
8 fact that they wanted to sign on is not sufficient, that there
9 was still key elements that have not been decided, and those
10 get decided in March 26th of 20 -- the date I think I have is
11 March 26, 2019.

12 All right. Now, if that then turns into a different
13 issue with specific documents, attorney-client issues, you can
14 raise those, but as a general principle I think that
15 communications between those parties at that point are not
16 privileged. They are just beginnings of negotiations.

17 Okay. We are running over. We can -- we can keep
18 running. Let me just say a couple of things.

19 I want to go on your list for a minute. The documents
20 produced by the government's parties in the receivership
21 litigation, I've read all of the papers on that. The -- I
22 believe the Oversight Board can use them -- I'm sorry -- that
23 the UCC can use the documents.

24 All objections as to relevance and the like can be
25 raised as appropriate.

1 I do want to throw out that it may be appropriate for
2 the efficiency in depositions and the like if the documents
3 that are going to be shown to witnesses before the deposition
4 are exchanged or at least identified shortly before the
5 deposition, especially if you've got a world of documents that
6 have not been sort of focused.

7 I'm not going to order that, but if you guys want to
8 talk about it at all, it tends to work a lot on this, I won't
9 say in bankruptcy cases, but in civil litigation it works if
10 you have a witness that's coming up if you can identify the
11 documents that you want that witness to be familiar with before
12 the deposition. It tends to make things move smoothly -- more
13 smoothly. I leave that to you.

14 Assured's loss reserves, I am not going to order them
15 produced. My reasoning is the same. It's either right or
16 wrong, but I'm not changing it.

17 So, now, we're getting into the specific categories.
18 Do you want to do that now, or should I take the fuel lines?

19 MR. BASSETT: I'm happy to proceed either way, your
20 Honor, whichever you would like me to do. I'm happy to do it
21 right now, if that's most efficient.

22 THE COURT: How are we holding up? How are the fuel
23 line people holding up? Are you holding up? How about we see
24 if we can do this in, like, 15 minutes.

25 MR. BASSETT: Fifteen minutes, okay.

1 THE COURT: All right.

2 MR. BASSETT: All right. So I think -- and you
3 probably are following along my Exhibit A here, your Honor. I
4 think what I'll do is try to consolidate --

5 THE COURT: Okay.

6 MR. BASSETT: -- some of the requests into ones that
7 are similar to one another, which will hopefully speed things
8 up.

9 First, the category of requests, and sorry they're not
10 grouped together, so it's skipping around a little bit. But it
11 would be requests 4, 9, 25, and 26. These are all requests
12 that one way or another go to the impact of the RSA and the
13 transition charge on other creditors, including information
14 relating to rate projections and ultimately the ability of the
15 Puerto Rico electrical system to absorb the transition charges
16 that are being imposed under the deal.

17 So we have asked that all documents in response to
18 these requests be produced. The government parties have agreed
19 to produce more limited documents; for example, the Oversight
20 Board has said they will provide analyses, but they won't
21 search for communications, et cetera; and AAFAF basically took
22 the position that they'll give us what was produced in the
23 receivership motion and otherwise produce some documents from
24 Ankura, but not from AAFAF personnel.

25 So very briefly, argument under this as to this issue,

1 your Honor, I think the impact that the RSA has on other
2 creditors is tied specifically to one of the reasonableness
3 factors, which the court must consider which is whether or not
4 and to what extent this settlement affects the paramount
5 interests of other creditors, nonsettling creditors, including
6 the committee. And it has been our position that this
7 settlement will leave no value for any other creditors and will
8 severely therefore prejudice the rights of unsecured creditors,
9 and we actually raised this during the July 11th hearing with
10 Judge Swain. And in response to that she said that the court
11 will consider core relevant issues, including contentions that
12 what I'm asked to approve now affects or forecloses legal
13 rights that a nonsettling party contends it would otherwise be
14 able to pursue. So I think the court has recognized this type
15 of discovery is relevant and permissible. I would also again
16 go back to the declarations.

17 David Brownstein, paragraph 25 of his declaration,
18 places this squarely at issue. He says -- and this is in a
19 section that he calls the key economic objectives of the
20 settlement. And he says that their first key economic
21 objective was that any recovery by PREPA's creditors had to be
22 secondary to the Commonwealth's overall recovery for which the
23 recovery of PREPA plays an important role. Then he says that
24 meant any agreed repayment of legacy debt could not outpace
25 revitalization of the Island's overall economy, and in

1 particular, the ability of PREPA's customers to pay any
2 increased rates or additional charges required to restructure
3 PREPA debt. So he places the documents out by all of these
4 requests directly at issue.

5 THE COURT: But I think you're being generous in your
6 description of what these categories call for. I think these
7 categories are much more granular and call for a lot of
8 financial information about the rates in particular, and I
9 think Judge Swain was pretty clear that she's not going to be
10 assessing the macroeconomics of this or doing the rate. She's
11 not being asked to approve any specific rate. So I think that
12 the categories that give you the analysis and give you the
13 conclusion of -- which you can then argue is no good or you can
14 argue that under these documents there really is no limit to
15 the rates or whatever you want to argue, I think you have the
16 legal argument, and I think you have enough of the facts as to
17 what's actually being charged to deal with it, but I don't
18 think that further -- further documentation is necessary or
19 appropriate from the 9019.

20 MR. BASSETT: But it's the factual issue as to whether
21 or not it is indeed true, as Mr. Braunstein says in his
22 declaration, that these -- that the surcharge is being imposed
23 under the settlement --

24 THE COURT: All right. I'm sorry.

25 MR. BASSETT: -- are sustainable --

1 THE COURT: From the beginning.

2 MR. BASSETT: Are sustainable and can be borne by
3 ratepayers. And whether there is any additional room to charge
4 additional surcharges to PREPA's customers. That's -- that's
5 what he places in issue.

6 THE COURT: I think Judge Swain is going to be arguing
7 or allow -- well, if you have a concern about some testimony
8 that you think is going in, feel free to move to strike it.
9 But as a general principle, Judge Swain, it's my understanding
10 in the 9019, will not be assessing whether or not the rate
11 charges as set or the formula for the appropriate rate charges
12 are appropriate.

13 MR. BASSETT: It's --

14 THE COURT: So...

15 MR. BASSETT: It's not the rates and the levels that
16 are being set. It's whether or not this settlement leaves any
17 value for other creditors, which goes squarely to the paramount
18 interests of creditors' prong of the reasonableness test.

19 THE COURT: The reasonableness requests go beyond
20 that, and I'm not allowing them.

21 MR. BASSETT: Okay. Thank you, your Honor.

22 Okay. Do you -- okay.

23 THE COURT: That has always been when it's a negative
24 ruling, everybody always says thank you.

25 (Laughter.)

1 MR. BASSETT: So the next one, this one actually is
2 not grouped with other requests. This is request 8 because, I
3 think, it kind of stands alone, but this is a request for
4 documents relating to alternative restructuring or litigation
5 strategies that the government parties considered.

6 Our position is that these documents should be
7 produced and that we're also entitled to a witness to testify
8 at a 30(b)(6) deposition about these documents or about this
9 the topic. And the government parties have taken a position
10 that they won't produce documents and won't produce a witness.

11 I mean --

12 THE COURT: The problem that I have with this request,
13 and anybody can jump up, okay, but if there's not a deal then
14 the fact that people have alternative proposals is interesting,
15 but there's no evidence that it would be agreed to. So I think
16 if there were other proposals that were submitted to be voted
17 on is a different issue than whether or not each party sort of
18 thought that they had different alternatives.

19 MR. BASSETT: I mean, our point on this, your Honor,
20 is that if -- I mean, if there was another transaction that was
21 on the table that had been proposed by, say, the bondholders
22 that would have been significantly more favorable to the
23 government parties, for example, and its other constituents,
24 for example, by leaving additional consideration that could be
25 paid out to other creditor groups in a plan, and then that

1 transaction was eschewed in favor of the one that was entered
2 into, that's a relevant consideration that goes to was the
3 transaction that they eventually agreed to actually reasonable.

4 And again, I point to the declarations, and maybe this
5 goes to a motion to strike, but they talk about alternative
6 again. This is paragraph 71 of the Brownstein declaration.
7 There are a myriad of settlement permutations that perhaps
8 could have been reached, but the settlement negotiation -- the
9 settlement negotiated by the RSA parties that is embodied by
10 the RSA was a reasonable middle ground is what he says. And I
11 just don't see how he can make these statements, and then we
12 can't test them so maybe again --

13 THE COURT: How do you -- is there any evidence of
14 agreement to alternatives? So the fact that you or I can come
15 up with a different way to resolve this doesn't really mean
16 anything unless there's another side to this equation that's
17 going to agree -- that's going to sign onto it.

18 So the -- I mean, I think we just heard from counsel
19 there are a million different ways that you can have structured
20 this. Do you reissue the same bonds? Do you just change the
21 rate? Do you carry over legacy debt? Whatever it is, I mean,
22 there are these different alternatives.

23 MR. BASSETT: But what we're asking for is documents
24 relating to the ones that were actually considered.

25 THE COURT: By who?

1 MR. BASSETT: By the government parties.

2 THE COURT: Before they presented them? I mean, do
3 you have --

4 MR. BASSETT: It goes --

5 THE COURT: Do you understand what I'm saying? They
6 could have presented anything. They could have sat in a back
7 room and come up with a million different ideas. But if --
8 unless there's some evidence that there's going to be an
9 agreement to that...

10 MR. BASSETT: I understand your point.

11 (Counsel conferred.)

12 MR. BASSETT: I hear the point that your Honor is
13 making, and if the government parties are talking about some
14 other deal that they would like in a perfect world where the
15 bondholders would --

16 THE COURT: Said don't pay us.

17 MR. BASSETT: Yeah, would accept nothing, then, no,
18 we're not -- that's not -- that's not the type of documents
19 that we're -- that we're asking for. But if there were other
20 proposals that were made or considered in the context of
21 negotiations we're entitled to those. Maybe they'll tell us we
22 already have that, I don't know, but that's the type of
23 information that we're asking for in these requests.

24 THE COURT: All right. So to the government parties,
25 to the extent that there were -- if there were agenda items

1 discussing any specific proposals or any votes to extend
2 proposals, those should -- can those be produce?

3 MS. STAFFORD: Those would have been part of any of
4 the agendas and meeting materials that would have been
5 presented to the board. And to the extent that such proposals
6 ended up in those types of agendas or meeting materials, they
7 either would have been produced or they will be in our
8 collection of additional board meetings.

9 THE COURT: So those productions shouldn't be limited
10 just to the RSA that was --

11 MS. STAFFORD: Correct.

12 THE COURT: -- eventually agreed upon?

13 Okay. So broaden that to any proposal.

14 MS. STAFFORD: It hasn't been to date limited to only
15 the RSA that was ultimately voted upon. It was other
16 alternatives that were presented as well.

17 THE COURT: So I think that's sufficient.

18 MR. BASSETT: The -- the next category, your Honor, is
19 going to be requests 10, 11, and 12 on our chart. Again, I'm
20 just trying to summarize for the sake of efficiency here, but
21 these are requests that ask for documents related to --
22 generally, that ask for documents related to the effect of the
23 RSA on a proposed transformation, including documents related
24 to the current status of the proposed transformation, its
25 estimated completion date, et cetera.

1 We've asked for a full response to these requests.
2 The government parties, the Oversight Board has said that they
3 will produce documents that refer to the effect of the RSA on a
4 proposed transformation, but we'll leave it to that. And then
5 AAFAF and PREPA have basically said they'll give us documents
6 produced as part of the receivership litigation, but nothing
7 else.

8 THE COURT: And that you have the documents from P3,
9 right?

10 MR. BASSETT: And that we can get documents from P3,
11 yes, they also take that position.

12 I mean, unless again this goes back -- unless the
13 government parties are going to submit revised declarations and
14 submit a revised supplemental memorandum of law in support of
15 their settlement that removes any justification related to the
16 effect that the RSA has on the proposed transformation as part
17 of the reason the court should approve it, then we absolutely
18 have to be able to explore that.

19 THE COURT: So the way I read it, and I certainly
20 didn't read it in the detail that you have analyzed the
21 economics of this, but the transformation was described as they
22 need to get this litigation behind them, and they need to know
23 what the debt is, and that's the only way that they can move
24 forward -- I mean, that was the extent of really the
25 representation in the declarations. I think you're free to

1 explore that, but I -- I don't think that the declarations went
2 beyond that. There was nothing in the declaration that I
3 recall that went --

4 MR. BASSETT: Well, but -- but --

5 THE COURT: -- more specifically and that's a -- you
6 know, that's a cross-examination. That says, you know, are you
7 making this up? Do you have anybody in mind? Do you really
8 have any idea whether one year or four years makes a
9 difference?

10 MR. BASSETT: But those are -- those are exactly the
11 types of issues and questions.

12 THE COURT: You don't need any documents, you just
13 need me.

14 MR. BASSETT: But we need documents that show -- that
15 shed light on those issues. How -- what is -- how likely is
16 the transformation to close? Are there other issues that are
17 going to either push out the time line indefinitely or cause it
18 to fall apart entirely? In that case, we shouldn't be entering
19 into a settlement in part based on the notion that that
20 settlement is going to help facilitate a transformation that's
21 just never going to occur anyway.

22 THE COURT: I'm not going to limit this or pretend to
23 micromanage what happens at the hearing; that's really
24 Judge Swain's decision, and I'm assuming it will flush out more
25 when you have the expert disclosures and the depositions, but

1 those types of arguments don't require document production.
2 They don't. You have -- you have the declarations. You have
3 the -- the communications among the parties that were
4 negotiating it. You -- you have the custodial records of the
5 key players in the negotiation, and you have the presentations
6 that were made, and to the fact that you want to undermine any
7 of these --

8 MR. BASSETT: Well, I just don't understand how --

9 THE COURT: -- is a matter of law.

10 MR. BASSETT: Like Mr. Chapados, he submits an entire
11 declaration on this point to the extent he's taking the
12 position that the proposed transformation is right on track,
13 and this RSA is really going to remove a significant road block
14 and help facilitate it, et cetera, I don't see how being able
15 to only ask him questions in a deposition without getting
16 documents in advance of that deposition that may controvert the
17 things he would say in his deposition, I don't see
18 how -- there's no way just being able to examine a witness
19 gives us what we need to fully explore this significant
20 rationale being put forward for the settlement.

21 THE COURT: You have the documents from P3, which is
22 the entity that's in charge, right?

23 MR. BASSETT: We are getting documents from P3, but P3
24 is not a party to this settlement. P3 is not a party, who is
25 standing before the court saying that the RSA is necessary to

1 facilitate the proposed transformation. They weren't involved
2 in any way in the negotiations.

3 I mean, to only get their view and not to get the view
4 of the parties who are actually making these statements in
5 their declarations to the court, we think is totally
6 insufficient.

7 THE COURT: But don't you have the documents from the
8 deponent, from the declarants?

9 MR. BASSETT: But not --

10 THE COURT: They're documents about what they have
11 supported.

12 MR. BASSETT: Not on this issue, that's the point,
13 your Honor. As to this -- the parties' positions are as laid
14 out in the chart as to these requests.

15 THE COURT: So the government's position is the
16 Oversight Board will produce documents that refer to the effect
17 of the RSA on the proposed transformation.

18 MR. BASSETT: Right.

19 THE COURT: And they've also given you information
20 somewhere along here on -- in the renewed receivership
21 litigation that had all the documents about what the plans were
22 for the transformation, as I understand it --

23 MR. BASSETT: It has some --

24 THE COURT: -- I told you you can use those.

25 MR. BASSETT: It has some documents related to the

1 proposed transformation, yes. But the other significant gap
2 that that leaves in the universe of the documents that have
3 been produced in discovery and are available to us is that, I
4 mean, discovery, I don't have the -- I don't have before me the
5 exact date cutoff for discovery in the renewed receivership
6 litigation, but we're talking about meeting the current status,
7 you know, recent information regarding the state of the
8 trans --

9 THE COURT: That status you can get from P3. I mean,
10 they're the ones that are negotiating this.

11 MR. BASSETT: That's --

12 THE COURT: That's what you need. That's the facts
13 that you're going to get.

14 MR. BASSETT: Okay. As to -- there's two more
15 categories. Requests relating to legislation and regulatory
16 issues, these are requests 17, 18, and 19, and including
17 communications with the Puerto Rico energy board or the
18 legislature regarding the different approvals that the RSA
19 requires in terms of implementing the surcharge and otherwise.

20 The government parties generally have -- well, yeah,
21 the government parties have generally taken the position that
22 they're not going to produce any of these documents. We
23 believe that they should be produced. We believe that they're
24 relevant. This all basically goes to how likely it is that the
25 settlement is actually going to be implemented because if the

1 settlement calls for certain surcharges to be applied in order
2 to pay these payments to bondholders that they're getting under
3 the new bonds, that all requires regulatory approval and
4 potentially other legislation; and to the extent that that
5 doesn't happen, the settlement can't be implemented. And the
6 reason why all that matters is because if this settlement falls
7 through and is never approved, it -- there's other
8 consideration that's being offered as part of the settlement
9 that's starting today, right? The bondholders are receiving
10 what's going to amount to hundreds of millions of dollars in
11 preconfirmation preimplementation payments, and in order to
12 evaluate whether that's an appropriate aspect of the deal, we
13 need to know how likely is it that these -- these rate
14 increases and everything else that the government needs to
15 approve will actually happen.

16 And another -- another quick reason why this is
17 particularly relevant is on July 3rd, a couple of weeks ago,
18 the government parties filed a rate motion with the Puerto Rico
19 Energy Bureau where they are seeking to start implementing the
20 surcharges called for by the settlement, and that rate motion
21 that they filed is inconsistent with what we understood based
22 on the RSA and the government file -- the government parties'
23 filings to date about how the surcharge is going to be
24 implemented. It's also inconsistent with what they said in the
25 fiscal plan. What we understood and what they said is that the

1 surcharge will be tacked onto -- to the base rate that
2 electricity customers pay. So there would be a net increase
3 overall in what customers pay. But in this rate motion,
4 they're actually asking it to be offset so the base rate goes
5 down, and then the incremental surcharges is offset against
6 that. And we've asked them. We've actually served
7 supplemental requests that we're still negotiating as to that
8 issue, but these documents that we're asking for regarding
9 communication with regulators, et cetera, are relevant for us
10 to be able to understand what exactly is going on here and what
11 exactly is happening.

12 THE COURT: So let me hear from the government parties
13 on this. And I'm wondering if it's appropriate to do something
14 along the lines that if this -- if any legislation has been
15 proposed that is related to the RSA.

16 MS. STAFFORD: So I'm not aware of any such
17 legislation at this point, but -- but I would note that we
18 viewed these three topics also as being foreclosed by the
19 positions in the statements that Judge Swain made at the
20 July 11th hearing, which were very clear that evidence and
21 arguments going only to whether matters requiring further
22 action by Puerto Rico's elected government officials ought to
23 be approved should not be offered at this juncture. That seems
24 to clearly contemplate the various points that Mr. Bassett
25 would like to make about the feasibility of implementing rate

1 increases or the legislature passing any legislation with
2 respect to these issues.

3 THE COURT: Okay. But you're unaware of any
4 legislation that has been proposed?

5 MS. STAFFORD: I'm not -- I'm not standing here right
6 now, but I -- I haven't done any investigation of that either,
7 so...

8 THE COURT: Well, it seems to me if legislation has
9 been proposed that's related, you ought to let them know in
10 some form or another. But I do -- I mean, I have to agree that
11 the argument -- the legal argument that says they haven't
12 proposed any legislation, there's no guarantee that the
13 legislation will be passed. Those are all issues that can be
14 propounded by you.

15 MR. BASSETT: Well, but not -- not adequately without
16 discovery. I mean, if they have documents where they have
17 communications saying that they don't believe that the
18 regulatory approvals they need for the settlement are actually
19 going to be given to them, then that -- then that goes to
20 whether or not it is in any way reasonable to let the
21 government parties pay, you know, hundreds of millions, upwards
22 of a billion dollars potentially to these creditors --

23 THE COURT: So --

24 MR. BASSETT: -- for a settlement that is never going
25 to materialize.

1 THE COURT: I am not prejudging that argument at all,
2 and it is an argument you are free to make, but you are getting
3 in the discovery the documents, the -- the information that was
4 presented to the parties that voted on it. That may or may not
5 include references to the likelihood of legislation. I don't
6 know, but you will have their assumptions in connection with
7 the information that weigh the costs and benefits of this
8 proposal, and that's --

9 MR. BASSETT: But if that -- but if that information
10 is just in a different document, we're not going to get that
11 document. I mean, it's --

12 THE COURT: But you are. Well, it's either there or
13 it's not there, and then your cross-examination is so you
14 didn't consider that it didn't pass. I -- I don't even know
15 what you're looking for.

16 MR. BASSETT: I'm looking for an effort to undertake a
17 reasonable search for documents and communications related to
18 the likelihood that regulatory approvals they're seeking and
19 that they need for the settlement will actually be obtained.

20 THE COURT: I think that the discovery that has been
21 allowed to date on the negotiations that have been produced and
22 the information that has been provided to the entities is
23 sufficient and that you are free to make the unknown argument.

24 MR. BASSETT: All right. I understand your Honor's
25 ruling on that issue.

1 The last request is request 20. This -- this request
2 seeks documents concerning the nature, extent, and value of any
3 security interest that the bondholders hold in assets of PREPA.
4 To be clear, this is the heart of the issue that's being
5 settled. It goes to the first reasonableness factor and the
6 test which is you know what are the risks inherent in
7 litigating the dispute if no settlement is reached. And the
8 entire issue there is, in our view at least, is, you know, do
9 these bondholders have a security interest in the assets of
10 PREPA. If so, to what extent do they have the security
11 interest? And all we're asking for with this request is
12 documents that go to that particular issue. So it's hard to
13 see how it could be more relevant.

14 The government parties have said that they're not
15 going to give us documents in response to this request unless
16 they're publicly available.

17 THE COURT: I'll hear from the government parties.

18 MS. PAVEL: Your Honor, that's not quite what our
19 response to this request has been. The nature and scope of any
20 alleged security interest is a legal question. It has been the
21 government parties' legal position there isn't a lien, and we
22 have filed a lien challenge, and that legal position has been
23 set out in a public manner.

24 In terms of evaluation of anything, it's my
25 understanding from the investigations that we have done to date

1 that PREPA in its ordinary course of business isn't valuing
2 anybody's security interests or doing any kind of, like, net
3 present value calculation.

4 They, of course, have revenue and expense information,
5 which would feed into that, and we've given that information so
6 I don't know that there's even anything other than potentially
7 attorney-client privilege or common interest attorney
8 communications with O'Melveny and Proskauer discussing those
9 issues that could even be provided.

10 THE COURT: How do you envision this issue being
11 presented at the 9019 hearing?

12 MS. PAVEL: My reference to the very same legal
13 arguments that we made in the lien challenge, presenting what
14 the controversy was in the litigation and referring to it that
15 way. It's a legal question. And they have the trust
16 agreement.

17 THE COURT: Okay.

18 MS. STAFFORD: Just one other note we'd want to make.
19 So first of all, the majority of the issues that are being
20 raised by this RFP are really legal in nature and can be
21 determined on the basis of those public documents that we
22 referred to, so the trust agreement and the other associated
23 documents. And in light of the fact that the receiver motion
24 productions are available to the UCC, and I believe some of
25 them have been produced here, there's ample information about

1 the value of what's in certain accounts as to which, you know,
2 we have disputes about what exactly the lien is that the proper
3 bondholders have, that that would provide them with all the
4 information they need in order to be able to understand and
5 make arguments on that point.

6 THE COURT: So have you been provide -- producing the
7 account information?

8 MS. STAFFORD: I would defer to AAFAF and PREPA
9 counsel on that point.

10 MS. PAVEL: Yes, we have produced account information
11 on the trust agreement accounts, and we have also produced
12 financial statements, cash flow reporting, the analysis feeding
13 up into the fiscal plan. They have several different
14 iterations of our revenue and expense information.

15 THE COURT: So, Mr. Bassett, what I wrote down in my
16 notes are legal arguments, have fax re: account information.

17 What don't have?

18 MR. BASSETT: Well, as to the account information, I
19 mean, one -- one idea that could partially resolve this request
20 is a stipulation with the government parties as to exactly what
21 is the value in the relevant account presently. So that's
22 something that I'm just --

23 THE COURT: I think maybe you can talk about that.

24 MR. BASSETT: So that's -- so that's -- that's a
25 possibility, but beyond that while, yes, we're going to make an

1 argument based on the documentation before the court, it's not
2 entirely -- that's not the entirety of the argument. I mean,
3 whether the bondholders have a lien and the scope of that lien,
4 yes, is a legal issue, but again there's a factual component to
5 it, which is, you know, what is it -- what is the value of the
6 security interest and, you know...

7 THE COURT: But isn't that dependent on what's in the
8 accounts? I mean, isn't -- isn't that the fight here? I mean,
9 which accounts are relevant and --

10 MR. BASSETT: That is -- that is in large part what we
11 are fighting about, but I don't know -- I mean, I'm taking
12 their representation that they've produced all the information
13 that we need on that front, and I -- sitting here today, I
14 can't say that we do.

15 THE COURT: Okay. Well, as I'm sitting it here it
16 looks to me like it's a legal argument, and it's a critical
17 legal argument but -- because it has to do with is the
18 settlement feasible? Is it a real issue? But I don't see that
19 it's a document production.

20 Could we be done?

21 MR. BASSETT: I think we're done.

22 THE COURT: Are we done?

23 MR. BASSETT: The only thing I would say as to all
24 these issues that we have been talking about is, I mean, there
25 has been a lot of rulings made today.

1 Is the court planning to issue a written order?

2 THE COURT: I will issue an order.

3 MR. BASSETT: Okay. Thank you, your Honor.

4 THE COURT: All right. Judge Swain, be prepared.

5 (Laughter.)

6 THE COURT: Okay. How are we doing? Everybody with
7 me?

8 Do you need a break? Are you okay?

9 What are we doing next?

10 MR. HAMERMAN: We're switching over, and they're
11 coming.

12 THE COURT: All right.

13 MS. DALE: Your Honor, may I step out for a moment?

14 THE COURT: Do you need to be --

15 MS. DALE: Be part of this?

16 THE COURT: Be part of this?

17 MS. DALE: No.

18 THE COURT: Okay. Go ahead.

19 MR. KLEINHAUS: Should I begin, your Honor?

20 THE COURT: Yes.

21 MR. KLEINHAUS: Good afternoon, your Honor. For the
22 record, Emil Kleinhaus from Wachtell, Lipton, Rosen & Katz. I
23 represent Cortland Capital Markets, LLC, a successor initiative
24 agent on a fuel line facility. I'm here with my colleague
25 Angela Herring.

1 The Fuel Line Lenders, including lenders under the
2 Cortland facility and lenders under a separate Citibank
3 facility extended a total of approximately \$700 million to
4 PREPA so that PREPA could purchase fuel, and I'm here to speak
5 to a motion to compel that Cortland and Solus have brought
6 against the government parties in connection with discovery in
7 this matter.

8 Three quick preliminary comments after listening to
9 everything that we've heard here today. So far one is we did
10 join in the committee's motions to compel without duplicating
11 any of the things they said. So we would expect to get the
12 same documents that they'll receive. I don't expect that will
13 be controversial. We have so far.

14 The second preliminary point. This goes to something
15 Mr. Bassett said is we also served supplemental document
16 requests on the government parties relating to a rate
17 application that was made to regulators in Puerto Rico recently
18 in which, as I understand it, PREPA has sought to reduce rates
19 by an amount to offset the amount of the increase or the
20 transition charge; and the reason we served that document
21 request is because the government parties in seeking to support
22 this settlement stated in numerous filings that in applying one
23 of the Jeffrey factors, paramount interest of creditors,
24 creditors here would not be affected or harmed, because this
25 was a supplemental charge. And then we learned recently that

1 that charge is being offset apparently dollar for dollar by a
2 reduction. I did not understand your Honor to be presented
3 with that issue or rule on that issue today. We still haven't
4 gotten a final response from --

5 THE COURT: I understand that the parties are talking
6 about that.

7 MR. KLEINHAUS: Correct. So I just wanted to make
8 clear for the record that we made that request. We're still
9 waiting for a final response. If necessary, we'll come to
10 court, but we just didn't understand that issue to be resolved
11 or presented to the court today.

12 THE COURT: That's right.

13 MR. KLEINHAUS: Okay. And then the third point, then
14 we're back to what your Honor said at the very beginning of
15 this hearing. Between our first motion to compel, really
16 between our requests and then our first motion to compel and
17 our renewed motion to compel, we did actually resolve some
18 issues, a number of issues with the government parties.

19 So it seems like there's a lot of disputes here, and
20 there are, and we still have one dispute, which I think is an
21 important dispute, but we have narrowed things with the
22 government parties over time, and our renewed motion to compel
23 really focuses on one issue that has a few parts. So I'll turn
24 to that issue now.

25 I'll start with the obvious. This is a discovery

1 hearing. It's not a hearing on the merits of the settlement,
2 on the merits of the settlement at this point. The government
3 parties have put in three separate submissions, include two
4 supplemental submissions, including a second supplemental
5 submission addressing issues particular to the fuel lines and
6 UTIER. They've put in hundreds of pages of briefing and
7 evidentiary submissions, declarations. We have not yet filed
8 our objection. We have a lot to say in response to what was
9 submitted, but that's obviously not what's in front of the
10 court today, and that will be in front of Judge Swain on
11 October 3rd.

12 THE COURT: Are you going to discuss both your
13 document requests and interrogatories and the deposition of
14 U.S. Bank or is --

15 MR. KLEINHAUS: I'm not covering U.S. Bank.
16 Mr. Friedman at Simpson Thacher on behalf of Solus will cover
17 U.S. Bank after I finish with the motion to compel vis-à-vis
18 the government parties.

19 THE COURT: Okay.

20 MR. KLEINHAUS: So the question before the court with
21 respect to the government parties is whether the government
22 parties should be allowed on the one hand to challenge the
23 status of the fuel lines as current expenses under the trust
24 agreement for PREPA's bonds while on the other hand refusing to
25 produce documents and to provide testimony on that topic, and

1 here's why that's a relevant issue.

2 As your Honor knows, the Fuel Line Lenders have stated
3 in pretrial reports at pretrial conferences and otherwise that
4 contrary to what the government parties have asserted this
5 settlement, not a future plan, this settlement will prejudice
6 the Fuel Line Lenders rights and interests immediately, not in
7 the future and that's because of the relationships between the
8 Fuel Line Lenders' debt and the bond debt under the trust
9 agreement and otherwise.

10 The trust agreement, we will argue in our objection,
11 provides the bondholders with a net revenue lien. What that
12 means is that the lien is net of current expenses, including
13 the fuel lines. It also provides the bond holders with
14 recourse to an account that is only funded with net revenues,
15 namely revenues after current expenses are paid, and there's
16 leftover revenue, and that revenue is deposited in the special
17 account.

18 So our position, as we've articulated, is that it's
19 the net revenue that go into that special account to which the
20 bondholders have a claim, but before there are net revenues
21 current expenses have to get paid. So we don't have a problem
22 with the bondholders getting paid, but our problem is the
23 bondholders getting paid without current expenses and, in
24 particular, the fuel lines getting paid.

25 So that's the basic issue we've raised, and in

1 response to this problem there were a couple of submissions as
2 to how the settlement does not -- well, first -- the first two
3 submissions didn't really address how the settlement does not
4 affect the Fuel Line Lenders rights. The third supp -- the
5 second supplemental submission and third submission address
6 that.

7 Our basic point with respect to the settlement -- we
8 have a number of points is: No. 1, it essentially inverts that
9 net revenue relationship. It turns a net revenue lien into a
10 gross revenue lien, because without paying the current
11 expenses, including the fuel lines, it allows for payments and
12 initiative claims to be made to the bondholders.

13 It also importantly purports to cut off the ability,
14 the legal right of the Fuel Line Lenders, to assert under
15 Section 502 of the Bankruptcy Code, Section 506 of the
16 Bankruptcy Code, and otherwise causes of action and objections
17 to vindicate the argument that I just made about this net
18 revenue lien and the limitations on the claim.

19 So these are aspects of the settlement, and there are
20 others too, including a most favored nation clause, I won't go
21 through it all now, that we believe negatively impact the Fuel
22 Line Lenders now.

23 And in the second supplemental submission after two
24 prior submissions, the government parties offered several
25 explanations as to why, in their view, the settlement does not

1 impact or impair the Fuel Line Lenders rights and interests.

2 Now, that's not in front of the court today, but what
3 is in front of the court today is that one of the arguments in
4 the July 19th submission that was made is an assertion for the
5 first time that the Fuel Line Lenders are not prejudiced by the
6 settlement because the fuel lines are not current expenses at
7 all. And in particular, they made a number of assertions and
8 statements to support the claim that the Fuel Line Lenders are
9 not current expenses at all.

10 First of all, they said, and here I'm quoting, that
11 there's no acknowledgment from PREPA that the lenders under the
12 Scotiabank credit agreement are current expenses. That's on
13 page 29 of the supplement. That's a factual statement about
14 history. No acknowledgment.

15 Our view and based on the evidence that we already
16 have gathered so far and we're prepared to martial in our
17 objection is that that statement is factually wrong. There is
18 lots, many acknowledgments by PREPA and others that the lenders
19 under the Scotiabank credit agreement are current expenses.
20 One of those acknowledgments or more than one in many different
21 versions of official statements provided to bondholders, PREPA
22 represented and stated to its bondholders that repayment of the
23 fuel line facilities and future lines of credit to cover
24 operational expenses is treated as a current expense under the
25 trust agreement, which is entitled to be paid before debt

1 service on the power revenue bonds. That's from the official
2 statement to the bondholders. That official statement was
3 approved by a resolution, which under Puerto Rico law is
4 incorporated into the trust agreement. There are many more
5 examples like that that we intend to put forward.

6 THE COURT: Let me -- let me stop you for a minute
7 though and ask the government entities that -- I want to
8 understand -- I can't rule on the scope of what's going to be
9 presented at this 9019, on this fuel line issue in connection
10 with a motion to compel. So that doesn't seem the right way,
11 but I do -- clearly, the filing said we don't think that the
12 9019 is going to affect the fuel line rights. You claim that
13 it is. I have a question of whether or not Judge Swain can
14 assume that the Fuel Line Lenders are right and still rule on
15 the 9019.

16 I could -- I need to understand where the -- if this
17 is actually coming up at the 9019.

18 MR. CLARK: Good afternoon, your Honor. Brandon Clark
19 on behalf of the Oversight Board.

20 I think that the -- Judge Swain actually just
21 yesterday really clarified this exact point for the court in
22 relation to the Andrew Wolfe subpoena, a motion for
23 protection -- for protective order that we had filed, the
24 Oversight Board, and that the judge granted.

25 The reason that I say this is that if you -- if your

1 Honor looks at the briefs for that, the UCC, the committee
2 raises a very similar argument in -- in why they wanted to
3 present Mr. or Dr. Wolfe's testimony at the hearing. In
4 their -- their opposition to our motion at paragraph 13, they
5 say that they are seeking it -- seeking to introduce it because
6 it's relevant to the extent to which that nonsettling creditors
7 are affected by the RSA.

8 In our reply, we pointed out, this being after the
9 supplemental briefing that counsel was just speaking about, we
10 pointed out why that's not the case. We went through in some
11 detail and a couple of paragraphs about why the RSA will not
12 impact the -- the nonsettling parties, and the judge in her
13 order yesterday said that for substantially the reasons that
14 were articulated.

15 THE COURT: I read the decision, and the decision had
16 a lot of grounds for why that -- the declaration shouldn't be
17 admissible -- admissible, including the relevancy of the facts
18 that were being presented.

19 Can you answer my question: Can she go through this
20 9019 hearing and assume that the Fuel Line Lenders are correct?

21 MR. CLARK: That they're correct about their priority?

22 THE COURT: That their position is correct, that they
23 should be paid as a current expense first?

24 MR. CLARK: I think that it is irrelevant to the
25 Judge's ruling on the 9019 motion, and that was the position

1 that we put forth in our papers related to Andrew Wolfe.

2 THE COURT: Can you assume when she makes her
3 decision, she can assume that the Fuel Line Lenders' position
4 is accurate as to the status of their payments?

5 MR. CLARK: I think it is immaterial to the judge's
6 decision.

7 THE COURT: I'm not asking you that. I'm really
8 asking you the question I want the answer to.

9 MR. CLARK: I understand you, Judge. Your -- I
10 understand, Juge. I guess my answer would have to be that, yes
11 she can assume that because it's not material to the decision.
12 I don't think it factors into the Jeffrey factors. I think
13 we've laid out in -- in our briefing as to why it is that the
14 approval of the RSA will not prejudice nonsettling creditors,
15 and so she can assume that they're right; she can assume that
16 they're wrong. I think she doesn't need to reach that
17 decision.

18 THE COURT: All right. The other question I have -- I
19 have two more. One is: Is there anything in the RSA that
20 precludes the Fuel Line Lenders from completing their adversary
21 proceeding?

22 MR. CLARK: Nothing that I'm aware of, your Honor.

23 THE COURT: And what does the provision of the RSA
24 that precludes lien challenges, what does that mean?

25 MR. CLARK: I'm sorry, your Honor.

1 THE COURT: There's a provision that says, "No person
2 or entity other than a person or entity acting on behalf of a
3 government party, other than a government party, shall bring a
4 lien challenge so long as there is not a stipulated treatment
5 termination." I don't know what that means. Like, does that
6 affect any argument that the Fuel Line Lenders might make?

7 MR. CLARK: I'm not sure, your Honor, that that is one
8 of the -- one of the issues that's before Judge Swain, as she
9 articulated at the July 11th hearing for what she's being asked
10 to decide at this juncture. So once again, I don't -- I don't
11 know that that is something that needs to be decided in order
12 to rule on the reasonableness of the -- the portions of the RSA
13 that Judge Swain is going to be asked to approve.

14 THE COURT: All right. So he -- can -- I can end this
15 hearing by telling her that she can assume that the Fuel Line
16 Lenders are going to prevail in their position in connection
17 with her ruling on the 9019, and there's nothing that you are
18 presenting to the court or otherwise that would prohibit the
19 adversary proceeding from being completed before she has to
20 rule on the actual plan?

21 I mean, is there anything that's going to happen
22 that's going to derail the adversary proceeding.

23 MR. CLARK: As pertains to the -- the RSA, I don't
24 believe so, your Honor. I believe the parties have been
25 discussing whether or not it may be more efficient to not

1 proceed with that at the moment, although I'm not personally
2 privy to all this conversation so --

3 THE COURT: Settlement is a different issue.

4 MR. CLARK: Okay. I want to be sure that I'm just
5 being --

6 THE COURT: If the Fuel Line Lenders want to have this
7 issue resolved, is there anything that's happening that will
8 prevent that from being resolved before or as part of the final
9 plan?

10 MR. CLARK: Nothing that I'm aware of. And -- and
11 just to fall back to what I was saying about what our position
12 is of what Judge Swain needs to decide. I believe that she can
13 assume that the Fuel Line Lenders will prevail or not prevail
14 and still reach the merits of what she's actually being asked
15 to approve in the 9019 hearing, so...

16 THE COURT: A lot of people are jumping up here.

17 MS. PAVEL: Ashley Pavel briefly for AAFAF and PREPA.

18 To grant us a little bit more in what documents are
19 actually needed because there has been lot of back and forth
20 what the legal questions will be. It's not clear to me what
21 more they would even need. Like, through the meet-and-confer
22 process, we produced the official statements that were quoted
23 back to you. We -- the trust agreement's available. They have
24 their credit agreements. We've produced the financial
25 reporting showing how balances were treated or not as per

1 expenses. And we've agreed to produce a 30(b)(6) witness to
2 discuss how PREPA has accounted for the fuel line loans and
3 fuel costs or not as current expenses.

4 So in terms of additional documents that would be
5 needed, it's not clear to me at all.

6 And as another point, the documents that are subject
7 to the motion to compel seem to be going to whether PREPA
8 breached the fuel line credit agreements by not continuing to
9 treat past due balances as current expenses. But that's a
10 separate question that was going on in the 9019 litigation.

11 What arguably is before Judge Swain in the 9019
12 litigation is to the extent they prevail in their breach of
13 contract claim and they have an unsecured claim for damages how
14 is that supposed to be treated vis-à-vis the bondholders'
15 claim, and is there anything in the RSA that would prevent them
16 from saying their claim should come first in a plan of
17 adjustment. And I don't believe there is anything in the RSA
18 that would prevent them from litigating that issue at planned
19 confirmation.

20 THE COURT: Thank you.

21 MR. KLEINHAUS: All right. Your Honor, I heard a few
22 things said, and I think if they're taken at face value they
23 could actually resolve our issues to some extent here or to a
24 large extent.

25 Number one, I heard said that the RSA will not release

1 or affect the lien challenge adversary proceeding that was
2 brought. That's a point that we were going to seek to address
3 and clarify through our objection. In light of the comments
4 that we heard so be it. The other thing I heard is that Judge
5 Swain can assume and the Oversight Board and the government
6 parties are content with it seems Judge Swain assuming for
7 purposes of the hearing that the current expense priority
8 argument is meritorious both in terms of the scope of the lien
9 and the claim and in any intercreditor rights. There -- I
10 understand that point. There's a body of case law out there as
11 to when settlements can be approved or can't be approved.
12 Despite departures from applicable priority, there's the
13 *Iridium* case in the First Circuit -- in the Second Circuit,
14 excuse me, that addresses that issue. And if the government
15 parties are planning to argue that despite this assumed
16 departure from priority the settlement should be approved that
17 I understand their position. We will contest it, but if that's
18 their position, then I think I agree that we don't need the
19 discovery we're seeking and the same is true on the lien
20 challenge.

21 I think the reason we had to bring this renewed motion
22 to compel is in their second supplemental submission, they did
23 argue in part, the first part of their brief, essentially what
24 your Honor asked and what I just said, which is it doesn't
25 matter if we're right as to the scope of the lien and on

1 priority issues because the settlement can be approved anyway.
2 And then -- but then at the end they said things like you're
3 not really a current expense, even though PREPA determined in
4 2012 that you're a current expense and made all kinds of
5 statements to that effect. We no longer think that.

6 So we felt required to bring the motion to compel to
7 address those statements; and if the government parties are
8 going to stand on what they said, I don't know if there's much
9 more to say. I certainly don't agree with any of the comments
10 about us not needing more documents in a world in which the
11 government parties plan to litigate those issues now. So if
12 the Court wants to get into that, I'm prepared to do so and to
13 explain in detail what additional documents we would need, but
14 that doesn't seem necessary given what the government parties
15 have now said.

16 THE COURT: This is what I wrote down from somebody's
17 brief. I don't remember if this was yours, but you wrote that
18 the government has refused to confirm that they will not argue
19 the merits of the priority issue, but only that the settlement
20 motion should not be approved regardless of how that issue is
21 decided in the future. I'm not -- I'm missing a nuance here.

22 MS. DALE: Yeah.

23 THE COURT: I guess, let me -- let me -- if this could
24 be done by stipulation, obviously, I would prefer that. I'm
25 not sure why it can't be.

1 MS. DALE: May I jump in for a second? Sorry to
2 interrupt. Hi. It's Margaret Dale again for the Oversight
3 Board.

4 I think we were of the position that the Fuel Line
5 Lenders' priority is not something that is subject to the RSA
6 at this point. But they came in and said, well, we believe
7 that we have a priority that's -- supersedes the bondholders,
8 and so we need all this discovery. And we said, No, you don't.
9 It's not an issue for the RSA. And they said, Well, we're
10 making it an issue. So I'm a little confused because we're
11 saying we don't think it's an issue for the RSA, and that if it
12 down the line they're right, then the judge is going to deal
13 with that as a confirmation issue. But they then come back --
14 we can't be precluded to -- to say -- we can't be precluded
15 from challenging their priority if that is something that is
16 going to be allowed to happen at the RSA hearing. That's our
17 position. We don't think it should come up, but if it does
18 come up, we don't think we can be precluded.

19 THE COURT: Well, so that's the issue. The issue is
20 can Judge Swain -- can -- can we report that Judge Swain can
21 decide this assuming that the Fuel Line Lenders are correct?
22 That's the issue. You can argue that it's irrelevant, but to
23 the extent that it comes up, the question is can she assume
24 it's correct -- that they're correct and rule accordingly,

25 MR. NATHBONY: May I --

1 THE COURT: I don't know. What are you talking about
2 here?

3 MS. DALE: No, I'm sorry. I apologize for the delay.
4 I believe your Honor is right so long as we can reserve our
5 rights with respect to this issue that if it does come up that
6 we have -- we've been arguing that they don't have this
7 priority. So if the judge wants to -- if Judge Swain wants to
8 take the position that the Fuel Line Lenders, you know -- I
9 will just assume that the Fuel Line Lenders' priority is as
10 they claim and proceed with the RSA, and not decide that issue,
11 assume it, not decide it, let everyone reserve their rights, so
12 that, you know, later or at planned confirmation that issue has
13 to be adjudicated, that seems like it's workable to me.

14 MR. NATBONY: Only with your permission, your Honor?

15 THE COURT: You have my permission.

16 MS. DALE: Sure, Bill.

17 MR. NATBONY: Thank you, your Honor.

18 THE COURT: So don't --

19 MR. NATBONY: No, I'm not looking -- I'm not looking
20 to break up any agreement. I just -- I think your Honor, to
21 the extent that your Honor wants to say that the -- Judge Swain
22 can go forward indicating that that issue is -- is preserved
23 and people's rights are preserved, I think that perhaps is a
24 more appropriate way to proceed as opposed to making an
25 assumption about the merits. That's the question that I have.

1 THE COURT: It's a two-prong thing, and I want
2 everybody to be clear on it. Everybody's rights are preserved,
3 and the understanding would be that the issue can and will be
4 decided at some point if the parties want it decided, because
5 there's nothing in the RSA that precludes it from being decided
6 is number one; and number two, if it's relevant to her analysis
7 of the RSA, I'm not making that decision. But if it is, she
8 can assume that the Fuel Line Lenders are correct. It's a
9 two-pronged issue. I'm hearing okay on that from the
10 government entities.

11 MR. NATBONY: Well, I mean, I've expressed at least
12 Assured's position that I don't know why the court would have
13 to force an assumption --

14 THE COURT: I don't see it as an issue or not, but if
15 it's -- if it's potentially going to be an issue, and I'm not
16 prepared to carve out issues --

17 MR. NATBONY: Right.

18 THE COURT: -- on the RSA.

19 MR. NATBONY: Well, your Honor, I was -- I was before
20 Judge Swain when we had our last pretrial conference, as you
21 were, and I thought that -- that the answer to all this was
22 that, you know, the Fuel Line Lender issue would be preserved
23 and dealt with potentially at confirmation. At least that's
24 what I heard. That's what I remember, but -- so I'm not even
25 sure why we need to get here because the issue of whether that

1 priority would be determined in the context of the 9019, you
2 know, it never came up. It wasn't going to be determined
3 during the 9019. It was a separate and completely unrelated
4 issue. That was my recollection.

5 Thank you, your Honor.

6 MS. DALE: Thank you, Bill.

7 Your Honor, I -- I'm very un -- I feel very
8 uncomfortable agreeing that Judge Swain can assume that the
9 Fuel Line Lenders have priority above the bondholders for
10 purposes of whatever she wants to do. I feel that -- I don't
11 think I can agree to that right now. I could agree to a
12 reservation of rights, and I'm happy to continue to try to talk
13 to the Fuel Line Lenders, but our -- the reason this became an
14 issue was because we didn't think that issue had anything to do
15 with the RSA, and the Fuel Line Lenders said, No, it has to be
16 decided now, and so here's all the documents we want from you.
17 And we said, We don't think it's an issue, but you can't -- you
18 can't preclude us from raising it if the Court wants to hear
19 that issue.

20 So I apologize if this is unclear, but I think that
21 position is where we end up here, that we don't -- we're not
22 comfortable letting Judge Swain and having somebody come back
23 and say, oh, the Oversight Board said you can assume that the
24 Fuel Line Lenders have priority above the bondholders here.
25 We're not going to be comfortable with that. Sorry.

1 MR. KLEINHAUS: Okay. Well, I think I heard two
2 opposite statements from the Oversight Board in the last
3 10 minutes in this exact answer to this question, and I
4 understand that the last answer is the answer. I think we have
5 made some progress today in that I heard very clearly from the
6 government parties that the RSA does not impair or affect the
7 adversary proceeding. That was one of our concerns.

8 To the extent our adversary proceeding is not being
9 released, good, but I just heard now from Ms. Dale that they're
10 not prepared to present the issue to Judge Swain on the
11 assumption that the priority position that we've articulated is
12 correct.

13 THE COURT: So what I am hearing is that they are
14 prepared to tell Judge Swain that the issue of priority is not
15 relevant to the 9019?

16 MS. DALE: Correct.

17 THE COURT: So I don't know if that's enough for you.

18 MR. KLEINHAUS: It's not. I mean, the lien challenge
19 point is helpful, but it's not enough, and the reason it's not
20 enough is it's fine for them to say it's not relevant, but the
21 substance of the agreement is what makes it relevant. We don't
22 want to argue priority now. We want to -- our clients want to
23 bring their lien challenge and argue about this in a plan. The
24 problem is the settlement makes that impossible because put
25 aside the nonrelease of the lien challenge. We have the fact

1 that all of these payments are being coming out ahead of the
2 fuel lines, and these very large administrative claims are
3 coming out ahead of the fuel lines, and there's a most favored
4 nation provision in the agreement. So there are things
5 happening now in the settlement that if the judge is not going
6 to assume that the fuel lines have priority, the issues being
7 made relevant by certain terms of the settlement, and that's
8 why given that the government is putting those priority issues
9 forward by -- rather than putting it -- I mean, the lien
10 challenge is helpful, but rather than putting off everything or
11 negotiating us in good faith now to try to reach a resolution,
12 they're going ahead with this settlement, making the payments
13 ahead of the Fuel Line Lenders, and giving the admin claims
14 ahead of the Fuel Line Lenders.

15 So there's still an issue here, and given that there's
16 still an issue, and the Oversight Board just said they won't
17 agree at least without further discussion or -- to this
18 assumption, I think at least in part, not totally, in part
19 we're back to where we started 20 minutes ago or so, and the
20 problem is that if they're not willing to make an assumption,
21 and yet they still want to go ahead with the RSA as is, there's
22 lots of factual things that they've said about current expense
23 status. And I gave one example of that.

24 One example I gave was that they had said they didn't
25 represent or confirm -- there was no acknowledgement that the

1 lenders under the Scotiabank credit agreement are current
2 expenses. That's a factual statement that we think is just
3 wrong, and we're entitled to discovery to show that that is
4 just wrong.

5 THE COURT: In light of what AAFAF has said about its
6 willingness to produce information combined with that you will
7 have your adversary proceeding, where are we on your -- your
8 document request?

9 MR. KLEINHAUS: Well, so they have produced some very
10 limited information, but what they never agreed to produce are
11 any documents relating to the current expense status and the
12 determination that -- that PREPA -- that the fuel lines are a
13 current expense.

14 THE COURT: They are producing documents showing how
15 they were treated, how the expenses are treated.

16 MR. KLEINHAUS: Just to give an example, your Honor,
17 there were official statements provided to bondholders saying
18 in so many words that the fuel lines are entitled to be paid
19 before debt service on the power revenue bonds. That was their
20 official statement. Communications about that statement,
21 whether external or internal, and there are lots of other
22 examples, including in a fuel line credit agreements where it
23 was represented that the fuel lines are current expenses.
24 Communications about those statements, whether drafts, emails,
25 if they're coming into court now and saying, we didn't give

1 that acknowledgment, that's one thing they're saying. Another
2 thing they're saying now is whatever determinations we made in
3 2012, ah-ha, we've changed. So you loaned us \$700 million
4 based on determinations made in 2012. It seems like their
5 theory now is too bad, we changed our mind now. How can we not
6 be entitled to documents about the initial determinations and
7 the supposed new determination when they're claiming that they
8 changed their mind after seven years?

9 THE COURT: I'm sorry. I missed it though. I thought
10 they were producing that information. So I'm missing what's
11 not --

12 MR. KLEINHAUS: They have not agreed to produce any
13 emails or communications about the original determinations that
14 the fuel line loans are current expenses, nor have they agreed
15 to produce emails or communications about the supposed new
16 determination that the fuel lines are not current expenses
17 after seven years.

18 And there's also a deposition issue, which is we want
19 to ask a witness about this stuff, and they've said we can't
20 get a 30(b)(6) on this question of current expenses, which we
21 just don't understand.

22 THE COURT: Okay. So on your document -- on your
23 document request does it make sense to sort of just go through
24 them?

25 MR. KLEINHAUS: Sure.

1 THE COURT: I guess -- is it -- is AAFAF the one
2 that's producing the information? Do you want to stand up
3 there, and we'll do them together?

4 We have request No. 5, all the communications since
5 the petition date -- are you following it? Do you have the
6 same list?

7 MS. PAVEL: No, but I'm listening.

8 THE COURT: Do you have your list with you?

9 MR. KLEINHAUS: I do.

10 THE COURT: Why don't you stand up there together, and
11 we can go over them.

12 As I understand it you're moving to compel Request 5,
13 6, 8, 9, 10, 22, 23, correct?

14 MR. KLEINHAUS: Correct.

15 THE COURT: All right. So 5 is all communications
16 regarding the status of the fuel line loans as current
17 expenses. And it's communications with specific entities.

18 Was that being produced?

19 MS. PAVEL: To the extent it's already encompassed in
20 the negotiation, communications we discussed in connection with
21 the UCC motion, they'd be getting it, but, no, we haven't
22 collected all the way back to the petition date to look for
23 these communications.

24 THE COURT: All right. Do you have -- do you object
25 to doing that?

1 MS. PAVEL: I do think it would be unduly burdensome
2 and very, very marginally relevant. We are producing all of
3 the underlining financial reporting about how they were, in
4 fact, treated and whether they're entitled to priority or to be
5 treated as current expense now that they're past due balances,
6 that's an legal issue based on the trust agreement, which they
7 already have. What people said about it isn't -- isn't
8 particularly relevant.

9 THE COURT: Well, but I think public statements
10 certainly are, and I think you're saying part of the problem is
11 that they haven't made statements to bondholders or...

12 MS. PAVEL: To the extent this refers to offering
13 statements, we have collected and produced the public offering
14 statements.

15 THE COURT: Okay.

16 MR. KLEINHAUS: Two points, your Honor, one I think
17 both on this and on 6, there's not a lot of burden. There are
18 simple search terms that could be used to look for these; but
19 second, I think the government parties have put at issue this
20 question of determination and acknowledgment of current expense
21 status with a whole bunch of statements in their supplemental
22 filings. So I don't think it's fair to say they put it at
23 issue by saying they haven't acknowledged it, and then we can't
24 look for documents.

25 THE COURT: I think five and six are producible, but

1 you need to meet and confer on search terms and appropriate
2 custodians.

3 Eight to me seems overly broad. I don't know why you
4 need it.

5 The same with nine and ten.

6 MR. KLEINHAUS: Very briefly, your Honor, I think I
7 would characterize eight through ten as record completing
8 requests in the sense that the -- we think we have a lot of
9 this stuff already. We just want to make sure we have a
10 complete record of all the borrowing expenses. And maybe what
11 we could do is meet and confer, and if we are missing stuff we
12 could talk to them, because one of the points they've made is
13 these aren't current expenses, and one of the points we're
14 going to make in response is these were all used to pay for
15 fuel, which is a current expense, and they were all within a
16 defined short-term period. So we want to have a -- make sure
17 we have a full record to confirm all those things.

18 THE COURT: I think you can work this one out.

19 MS. PAVEL: Okay.

20 MR. KLEINHAUS: Okay.

21 THE COURT: Twenty-two, relating to current expense
22 treatment of priority of loans made under the Citibank credit
23 agreement.

24 Is that -- isn't that sort of assumed and...

25 MS. PAVEL: We've pointed them to the public location

1 of the financial records going this far back. All documents
2 relating to the current expense treatment is very overbroad and
3 would be burdensome to go that far back and try to find
4 everything related to it, but they have the financial
5 reporting, and they know how the expenses were treated.

6 MR. KLEINHAUS: Your Honor, on this one, I would come
7 back to my earlier comment. They've now asserted in a
8 supplemental filing that they did not acknowledge the current
9 expense status, and they're redetermining the current expense
10 status. I think we're entitled to the full record of all their
11 acknowledgments of the current expense status including in
12 communications with bondholders and others.

13 THE COURT: So what's your difference between five,
14 six and --

15 MR. KLEINHAUS: Five and six, your Honor, are
16 communications with a number of specific parties; 22 and 23,
17 among other things, would include internal communications.

18 THE COURT: Do you have the applications for the
19 credit agreements? Has that been produced?

20 MS. PAVEL: No, that has not been produced, your
21 Honor.

22 THE COURT: I think documents relating to whether or
23 not these are treated as current expenses need to be produced,
24 and they need to be produced from January 1, 2020, forward.

25 MR. KLEINHAUS: 2012, your Honor?

1 THE COURT: I think you need to meet and confer and
2 make that a reasonable request. All documents relating to
3 anything is too broad.

4 MR. KLEINHAUS: Fair enough, your Honor. I think you
5 might have stated 2020. Just to be clear --

6 THE COURT: 2012.

7 MR. KLEINHAUS: Okay. All right. Thank you, your
8 Honor.

9 I think the only open issue then is the -- the
10 30(b)(6), and we can meet and confer on that as well --

11 MS. PAVEL: Yes.

12 MR. KLEINHAUS: -- if the government is amenable?

13 THE COURT: Okay.

14 MS. PAVEL: Yes, we can meet and confer.

15 THE COURT: I don't mean to keep you all here really
16 late, and then you agree. Okay. The next hearing starts at
17 4:00.

18 MS. DALE: Your Honor, it's Margaret Dale for the
19 Oversight Board, and I apologize but I have to clarify for the
20 record a few things relating to -- to the Fuel Line Lenders,
21 because I don't think -- I don't think we spoke correctly
22 before.

23 First of all, I'm looking at the supplemental
24 submission that went in the other day. One thing I just want
25 to note for the record is that we've said that if the Fuel Line

1 Lenders are really senior, as they contend, then they
2 have -- they retain rights to turnover of funds as well as the
3 court -- the court could deem the plan not confirmable. So
4 there are alternative methods for the Fuel Line Lenders to be
5 compensated either as a turnover or the plan not, you know,
6 being confirmable.

7 The more relevant issue that I wanted to raise is
8 the -- the Fuel Line Lenders filed a complaint, you know,
9 asserting their sort of *Alleyne* challenge against the
10 bondholders' liens. We had the same lien challenge, but we're
11 settling that. The Oversight Board -- the government parties
12 are settling the lien challenge as part of the settlement of
13 the RSA. So, you know, that -- that is off the table. They
14 have -- they have their own rights to continue to claim that
15 they have a priority, but we cannot concede that the -- that
16 the Fuel Line Lenders can bring a lien challenge because that's
17 not -- that's not something they can bring. We could --

18 THE COURT: They brought an adversary complaint. The
19 question that I asked was whether or not that can be -- that
20 can play out through conclusion despite the lien provision.

21 MS. DALE: Despite our settlement of our lien
22 challenge. And my understanding is that we -- we've never
23 asserted that they had a -- have a right to bring that
24 challenge in the first place, and we haven't -- we can't agree
25 that they can continue to bring an adversary complaint to

1 fruition of their -- for their own lien challenge here.

2 And, you know, I -- I appreciate that -- that I think
3 my colleague misspoke, but it sounded not appropriate to me,
4 and I -- we've gone back to look, and I don't want to leave the
5 record obviously wrong on an issue this important that -- that
6 your Honor raised with us.

7 THE COURT: And it is very important actually.

8 MS. DALE: I know.

9 THE COURT: So I think we are back to --

10 MS. DALE: I think we are.

11 THE COURT: -- the agreement. We'll see what happens
12 at the 9019 then how that's presented in that, but I think it's
13 appropriate. All right.

14 And the deposition, do we -- I'll deal with it now, if
15 you want to, but do you think you can agree? And does
16 this involve -- is this the U.S. Bank as well or?

17 MS. DALE: You should address it.

18 THE COURT: People I made sit here for hours quietly.

19 MR. FRIEDMAN: Good afternoon, your Honor. Bryce
20 Friedman, Simpson Thacher & Bartlett for the Solus parties to
21 address the U.S. Bank issue. I'll be brief given the hour and
22 everything that has just been discussed.

23 U.S. Bank is the trustee for the bondholders, and we
24 have asked the trustee for the bondholders about the same
25 documents you just ordered. I think you just ordered the

1 government parties to produce documents whether -- and to the
2 extent that the fuel lines were treated as current expenses you
3 said should be produced. We asked the U.S. Bank to produce
4 their similar documents, and I think the answer to this point
5 has been no. This is not a very burdensome request. We asked
6 the other financial institutions involved to do the same.

7 Citibank, like every other major bank involved in
8 loans of this extent produced a -- a few-page document which
9 said, "Advances under the trade finance facility will be
10 considered by PREPA as current expenses proving priority claim
11 over bondholders and other creditors." U.S. Bank must have a
12 similar document in its files. I don't know where they are.
13 We haven't taken a document custodian deposition. We've asked
14 them to go find it. I think they were taking a similar
15 position as the other parties were today that it's not
16 relevant. It clearly is for the reasons my colleague,
17 Mr. Kleinhaus, explained. So we would like to have the
18 opportunity to receive that small handful of documents.

19 We've also asked U.S. Bank for a deposition. The
20 deposition was for two purposes. One is to deal with the lien
21 issue. They've produced a multipage spreadsheet with a whole
22 bunch of numbers on it, which I think indicate which accounts
23 they think they have control over or money in or have a lien
24 on. We want to depose a witness, it will be a short witness,
25 to figure out what they actually think they have a lien over so

1 we can respond to it appropriately in an objection.

2 And to the extent that are there are documents that
3 confirm our agreement with U.S. Bank and the fact that they
4 agree with our position on current expenses, like everybody
5 else who was involved prior to this bankruptcy petition, has
6 agreed. We would ask them a few questions about that as well
7 as in a deposition to confirm their historical agreement and
8 deal with the issues that the government parties have raised
9 in -- in their brief.

10 THE COURT: So you did -- you did request a deposition
11 topic on the negotiation or entry into the terms of the RSA,
12 and they responded that they didn't -- they didn't negotiate
13 it? So I don't -- I'm not sure that's what you're really
14 asking for.

15 Are you really asking for how are they treating
16 everything now?

17 MR. FRIEDMAN: Correct. What we're interested in is
18 how is this going to change the -- affect our clients. And
19 they were clearly involved, and I didn't want to get -- we
20 didn't want into -- we tried to avoid a debate over whether --
21 what participation negotiation means. They were clearly
22 involved. They said they have many, many privileged documents.
23 If they were truly involved given that they're producing a
24 30(b)(6) witness, it's going to be a very short set of
25 questions. And they'll say, we had no involvement whatsoever,

1 and we don't know -- we don't know. But that's really probably
2 not the factual circumstance here based on what we've learned
3 to date.

4 THE COURT: Who's representing the bank?

5 MR. DUFFEY: Good afternoon, your Honor. John Duffey
6 from the Maslon law firm on behalf of U.S. Bank National
7 Association in its capacity as the present bond trustee.

8 I'll take the issues in the same order as counsel
9 raised. So first with respect to the document request, I think
10 the specific document request that's at issue here is worded
11 differently than the request that you resolved prior that was
12 issued to the government parties.

13 The request here is specifically asking for
14 communications with external parties. I think that's the only
15 reasonable way to read the request at issue here. Moreover, as
16 part of the meet-and-confer process, U.S. Bank and the Fuel
17 Line Lenders came to a specific agreement about what was going
18 to be searched for and produced with respect to that request.
19 We complied with that agreement. They were looking for
20 external communications between U.S. Bank and either PREPA or
21 the PREPA bondholders. And they agreed to limit the search
22 that U.S. Bank had to conduct to email files using the search
23 terms that they proposed. We ran those terms against the
24 relevant custodians, and we produced the external
25 communications that result to it.

1 Now, they're seeking kind of, you know, to expand the
2 scope of that request, beyond not only the agreement that they
3 reached, but also even the actual language of the request
4 itself. And we don't think that that's appropriate at this
5 point.

6 With respect to the depo topics -- sorry.

7 THE COURT: Do you have a file though that has the
8 original loan documents, the original communications about it?
9 Leave aside the emails. It seems there's probably an
10 application, there's probably maybe some explanatory material.
11 There are opening forms.

12 MR. DUFFEY: In terms of -- so I don't think that
13 they've requested anything of that nature. I mean, their
14 request is specific just for communications regarding the
15 purported fuel line -- the priority status of the fuel line
16 loans, as well as the current expense treatment of that. So,
17 you know, I don't think that they've requested that, but beyond
18 that, you know, your Honor, I don't think it's appropriate at
19 this stage for them to be seeking that.

20 If you're done with that request, I'll return to the
21 deposition topics. With respect to the topic number one, which
22 asked about the negotiation entry into in terms of the RSA,
23 the -- the story keeps changing a little bit on the Fuel Line
24 Lenders and as exactly what they're actually seeking testimony
25 on on this topic.

1 We've informed them that the U.S. Bank is not a party
2 to the RSA and that it wasn't one of the parties that
3 negotiated the RSA. Those are undisputed facts at this point.

4 If they're only really seeking a deposition to
5 understand what our, you know, participation of that is, that's
6 a different story.

7 What they've indicated in their papers is that they
8 actually want to quiz a U.S. Bank witness on the terms of the
9 RSA and how those terms will be implemented. We think that
10 that's just not appropriate, and we cite case law that
11 indicates that a deposition, a 30(b)(6) deposition, shouldn't
12 focus on issues of contract interpretation.

13 And with regard to counsel's comment about the fact
14 that we've asserted privilege. The concerns that we have from
15 a privileged nature aren't because, you know, they're necessary
16 privileged communication with U.S. Bank -- between U.S. Bank
17 and their counsel about what's going on, you know, with respect
18 to the RSA. The concerns we have is that, you know, U.S. Bank
19 wasn't involved in these negotiations, so to the extent that,
20 you know, they're asking for testimony from U.S. Bank about
21 what the RSA actually says and how it's supposed to be
22 implemented, that -- that's the subject of communications that
23 are taking place between U.S. Bank and its counsel in
24 understanding that agreement. That's just not appropriate
25 for -- an appropriate topic for a 30(b)(6) deposition.

1 With respect to the other topics, topic No. 2,
2 concerning the control of the bank accounts, you know, we've
3 offered to present the two facts that they are looking for by
4 declaration, as opposed to deposition on this front.
5 Specifically, we've offered a declaration that says -- that
6 will say, you know, these are the accounts that are held at
7 U.S. Bank, and also, you know, U.S. Bank's knowledge of any
8 deposit account control agreements regarding the accounts at
9 the other banks. That's what they've indicated they're looking
10 for.

11 But in their papers they say they actually want to
12 look for something more than that. They want to be able to
13 fully examine the nature of the security interest at play in
14 the trust agreement, and that's why that line of cases that we
15 cite about how 30(b)(6) topics can't focus on legal conclusions
16 comes into play.

17 Specifically, the way that they've drafted this topic
18 would permit them to question the U.S. Bank witness on a whole
19 host of other questions relating to control that aren't
20 narrowly focused on what accounts are held at U.S. Bank and
21 whether there are deposit control account agreements at other
22 banks.

23 So -- the topic as drafted presents kind of all sorts
24 of issues that under the case law make it an appropriate -- an
25 inappropriate topic -- an inappropriate topic under 30(b)(6).

1 With respect to topic No. 3, so this one seeks
2 testimony on U.S. Bank's position regarding the Fuel Line
3 Lenders' priority status. Counsel seem to make representation
4 that they're really only looking for testimony about specific
5 communications that we might have produced or, you know, or
6 might be out there that they're aware of about the specific
7 issue, but again the language as actually drafted is much
8 broader than that and would allow the Fuel Line Lenders to
9 question the U.S. Bank witness about actually -- about U.S.
10 Bank's actual position on this legal issue.

11 Again, you know, we cite cases, the *Neponset* case,
12 *W. Holding, Cooper*, all of these routinely reject this type of
13 contention topic and find that it's inappropriate for the
14 purposes of a 30(b)(6) deposition, and the reason why it's
15 inappropriate is these are legal issues, and it's going to be
16 very difficult for a lay witness to divorce the facts that
17 might support that issue from the actual legal conclusion that
18 those facts relate to.

19 Lastly, with respect to the last topic, topic No. 4,
20 again this is just a catchall topic. They've, you know, to the
21 extent they're just trying to seek testimony to authenticate
22 documents, we've offered a declaration to do that, and we're
23 willing to work with them on a stipulation to do that. What
24 seems to be clear based on their papers is they actually want
25 to just use this as an opportunity to inquire about anything

1 that's in our production and to ask substantive questions about
2 that. We did feel that that lacks the specificity required by
3 Rule 30(b)(6).

4 So the only other points I guess I wanted to make were
5 just to reserve U.S. Bank's rights with respect to a couple of
6 things that were said prior to that -- prior to this. You
7 know, with respect to the position that the Fuel Line Lenders
8 are asserting that -- regarding the scope of U.S. Bank's and
9 the PREPA bond trustee and the PREPA bondholders' liens, we
10 reserve the rights to contest those arguments in the
11 appropriate forum, and we feel that that appropriate forum is
12 the adversary proceeding that -- that your Honor is aware of.

13 And we don't think that this sort of discovery is
14 appropriate within the context of the settlement motion in
15 light of all the arguments that we've raised in our papers.

16 MR. FRIEDMAN: Your Honor, I would -- this is Bryce
17 Friedman again for the Solus parties.

18 I just would like to make two quick points at this
19 late hour. I think on the objections to the deposition, what
20 we're hearing is asking requests for prerulings on deposition
21 questions. We've taken a lot of deposition questions
22 in -- depositions in circumstances just like this where we can
23 ask about the relevant historical facts going back to 2000 that
24 presumably will get a better understanding of once we get the
25 documents that reflect what has happened at U.S. Bank and its

1 agreements with the various bondholders over that time back to
2 2000. We're not going to ask legal questions. If you ask me
3 which bank accounts do I control, I would tell you it's my
4 checking account, my savings account, and my retirement
5 account. Those are factual questions, not questions that
6 require any sort of legal conclusion. And if there's an
7 objectionable question, there will be an objection and
8 presumably an instruction.

9 As to the specific document requests we made, we
10 disagree over the wording of the requests and what it meant.
11 We tried to clarify for U.S. Bank that it was intended to get
12 at the documents you were asking about, which is the file and
13 the communications that they were made -- making with respect
14 to the current expense treatment of the Fuel Line Lenders since
15 2012. Unfortunately, we didn't find out until the very last
16 minute that we weren't going to get those stuff. So here we
17 are.

18 Now that we've clarified it over and over again, I
19 think it would be appropriate for U.S. Bank to give us that
20 file and any communications they had about that one very small
21 issue that is on -- in dispute with our clients.

22 THE COURT: So I think the -- let me do the disputed
23 document requests first. All right. It says all
24 communications since May 4, 2012, with any other person or
25 entity relating to the fuel line loans, including such

1 communications relating to current expense, treatment, or
2 priority status. It's too broad. You need to figure out what
3 you're asking for. All right. And if -- if the document
4 request is all bank documents or all documents relating to the
5 loans that reflect whether or not these were treated as current
6 expenses, period, that's a more finite request. I think all
7 documents to any person over a six-year period that may somehow
8 reflect what the treatment of the document -- of the
9 loans -- loans were is too broad. So can you work on limiting
10 that?

11 MR. FRIEDMAN: Absolutely. And we have, your Honor.
12 And we don't know what they call it, but every bank that we
13 have encountered in -- across this has a file. I think your
14 Honor referred to it as the loan file. This is a trustee file
15 that explains the payment priorities associated with the
16 \$8.4 billion facility and --

17 THE COURT: So it's not communication. Okay. So it's
18 bank documents controlling -- establishing the terms.

19 MR. FRIEDMAN: There is -- in most, and we have said
20 this. Again, we haven't got any information back. There is a
21 loan file that is associated that's the official file, and then
22 after that there is probably some communications with the
23 bondholders over their current expense treatment. Very narrow
24 areas. Those are the things that we've asked them to search
25 for and have not gotten any meaningful response that would be

1 hard or burdensome or anything like that. And it goes back to
2 2012, as your Honor -- as your Honor indicated.

3 THE COURT: So you can get documents going back to May
4 2012 specifying communications between the bank and -- and
5 identify who you want. All right. Relating to whether the
6 fuel line loans are treated as current expense treatment or
7 their -- or their priority status. But put it in English
8 because it would probably then have a better response.

9 MR. FRIEDMAN: Fantastic. And could we also get the
10 loan file.

11 THE COURT: And then the loan file.

12 MR. FRIEDMAN: Fantastic.

13 THE COURT: And that's -- that's the limit. You two
14 can work it out. If you can't work it out, file what your
15 proposal is. I'll rule on it on the papers, and do it by the
16 end of the week, all right?

17 MR. FRIEDMAN: Yes, your Honor.

18 THE COURT: On the 30(b)(6) witness, they are entitled
19 to some of this. They are entitled to a witness that will
20 explain the documents that he has specific questions about.
21 That's not all documents that have been produced. If you've
22 got a spreadsheet that's a problem that you don't understand,
23 so see if you can identify the documents that you want
24 explained in that.

25 MR. FRIEDMAN: We'd be happy to send them the whole

1 set of documents that we are going to ask questions about in
2 advance of the deposition, we just need that full set of
3 documents.

4 THE WITNESS: Okay.

5 MR. DUFFEY: I just want to address one point
6 regarding the document request. So I'm not aware of any sort
7 of loan file that they're suggesting, so I'm willing to meet
8 and confer with them about the types of files that an
9 indentured trustee would have related to this.

10 THE COURT: I don't know what it's called, but there
11 is a file that has the operative documents --

12 MR. DUFFEY: Okay.

13 THE COURT: -- that identifies the terms of the loan
14 and the payment processes under the loan. It's -- it's --

15 MR. DUFFEY: So just to be clear, that there was no
16 loan from U.S. Bank, but in terms of you're asking for the --
17 essentially, the -- what would be part of the closing
18 transcript related to the bond per se, like, the closing
19 transcript related to -- so, like, the trust agreement and any
20 supplements to that and the like?

21 Again, I'm not asking for specific guidance. I'm just
22 more so inquiring because there's nothing that --

23 THE COURT: Identify the official -- how would you
24 have in your possession --

25 MR. DUFFEY: Sure.

1 THE COURT: -- information about how these loans were
2 being treated.

3 MR. DUFFEY: Okay. I think that we can work together
4 to try to figure out what -- what that means.

5 THE COURT: All right. Now, from the Fuel Line
6 Lenders though can you take a declaration as to the
7 specific -- as to U.S. Bank's role in connection with those
8 specific funds?

9 MR. FRIEDMAN: Yeah, based on what you said today and
10 hopefully the cooperativeness over the next week, we'll take a
11 declaration on any of these documents, frankly, that are going
12 to be admissible and not challenged by -- by -- by -- by any of
13 the parties in order to get some of the more technical stuff
14 in. We've just -- we're waiting for the declaration. We can't
15 write it because we don't know what we're looking at. So we're
16 happy to try and work with counsel to get a declaration or
17 appropriate stipulation to get some of these more technical
18 facts into the record.

19 THE COURT: I think, for the record, I think the
20 objections are right given the scope. I recognize that you've
21 tried to meet and confer. It hasn't worked. Do one more time.
22 After that just file it, give me both positions, and I'll rule.
23 Okay?

24 MR. FRIEDMAN: Thank you, your Honor.

25 MR. DUFFEY: Thank you, your Honor.

1 THE COURT: Anybody else feel the need to talk?
2 There are some people have been quiet. No? We're
3 done?

4 All right. Thank you, all.

5 THE CLERK: All rise.

6 (At 5:56 p.m., Court was adjourned.)
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C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby
certify that the foregoing transcript is a true and accurate
transcription of my stenographic notes before the Honorable
Judith Gail Dean, to the best of my skill, knowledge, and
ability.

/s/ Marianne Kusa-Ryll

8/1/19

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter